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DECISIONS OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

We have just made arrangements for receiving in full the decisions of the Court of Appeals of the District of Columbia as soon as published. We will digest all of these decisions under our regular weekly digest and comment at length on those decisions which seem to be of special interest or importance, as we do now with regard to the decisions of other appellate tribunals. The personnel of this court is very high and its decisions and opinions evidence great learning and a keen insight into the law. They will undoubtedly prove interesting and instructive to the profession. Information as to obtaining copies of the opinions of this court in full can be obtained on request.

TORRENS SYSTEM OF REGISTERING TITLE TO LAND.

A most exhaustive and accurate resume of the Torrens experiment of title registration is to be found in the address of Hon. Edward T. Taylor, of Glenwood Springs, Colo., before the last meeting of the Colorado Bar Association. He traces the beginnings of the system to the little country of Bohemia where it is said that registered ownership of land runs back to a time whereof the memory of man runneth not to the contrary. From that beginning he records the wonderful advance of the idea throughout continental Europe and especially in the Austrian provinces, which is said to be the only country where a loan of fifty dollars can be made on real estate with as little trouble and expense as on personal property. There is room for much thoughtful meditation in that statement. The revival of this idea in modern times and with certain admirable improvements was inaugurated by Sir Robert Torrens of Australia. Mr. Taylor, in speaking of the wonderful success that attended the efforts of this reformer, says: "It will thus be seen that one of the greatest measures of reform in the law of real property inaugurated in the entire history of the common law was conceived and put into successful operation by a layman without legal training."

Mr. Taylor then gives a clear and interesting account of the infectious character of the new idea; how it spread into England, then into Canada, and finally, into the United States, where every year adds to its conquests. He reviews fully the operation of the system in Illinois, Massachusetts, California, Minnesota and Oregon, and closes with a prophecy, and the following summary of its advantages:

"And now that this reform movement in the matter of preserving and transferring title to real estate has started, it is as certain to follow as the night the day that this system, or some modification of it, will be universally adopted in the United States and throughout the civilized world within a very few years. It is a system conceived and carried out in plain common sense. For clearness and certainty, for speed and safety, and for economy of time and expense the system commends itself to every thoughtful and unprejudiced mind. It is strange and unfortunate that the general public, and even the members of our profession, know so little about this subject. There seems to be an impression that the procedure of registering and transferring registered titles is difficult to be understood, except by lawyers. This is a mistake. The system is neither intricate nor difficult to learn, but is simplicity itself, as compared with the old practice of deed-recording."

This address of Mr. Taylor's covers ninety pages of the report of the last meeting of the Colorado Bar Association just published. In connection with the special number of the CENTRAL LAW JOURNAL treating of this questions (54 Cent. L. J., pp. 281, 296) the inquirer for information will have his desires fully satisfied.

EXTRA-TERRITORIAL EFFECT OF THE PEN- DENCY OF BANKRUPTCY PROCEEDINGS ON SUITS INSTITUTED IN OTHER JURISDIC- TIONS.

Time and experience will test the advantages or disadvantages of any system. The new bankrupt act is proving no exception to this unalterable rule.

A curious instance of the statute's failure has arisen in Tennessee and become the bone of public contention. It is a practice of railroad employees on the lines running out of Memphis into Arkansas, Alabama, Missis-

Mississippi and Kentucky, when they have occasions to go into bankruptcy to file their papers in the United States District Court at Memphis. They serve bankrupt notices by mail on their creditors in the states where they chance to have runs on the railroads, but the creditors pay no attention to the notices thus mailed to them and bring suit against the aforesaid railroad employees when they find them in the states where they chance to owe debts. While the bankruptcy proceedings are pending in the court, the employee cannot plead his discharge, and a defiant creditor and his favorite "squire" have the railroadman at their mercy.

Justice Hammond of the United States District Court sitting at Memphis, in a public interview, volunteers quite a severe comment on the failure of the bankrupt act in this instance. "It is one of the countless defects of this slovenly bankrupt statute that it does not protect the bankrupt as the old statute did, by a statutory injunction against all suits pending the bankruptcy," said Judge Hammond. "If the bankrupt has his discharge he might plead it whenever and wherever he is sued. If the discharge has not been granted, he may plead the pending of the bankruptcy proceedings and ask stay until the discharge has been granted or refused. If the stay is refused, the railroad company would hardly dare to pay money on a judgment against the bankrupt in the face of such a plea. But the great trouble is that the employee stands in mortal dread that the railroad company will discharge him rather than take the risk of such dangerous litigation, and pays the debt to save his position. It is unjust and heartless coercion put upon him by his company and his creditors, but whether he has any remedy for it either against the company or the creditor, I am not prepared to say. Congress should provide a remedy by amending the statute with the special purpose of giving more summary effect to the bankruptcy proceedings in other states."

NOTES OF IMPORTANT DECISIONS.

DAMAGES—MENTAL SUFFERING AS AN ELEMENT OF DAMAGE IN AN ACTION FOR DELAY IN THE SHIPMENT OF A CORPSE.—Quite an unusual case is recorded under the title of *Louisville v. Nashville R. R. v. Hull*, 68 S. W. Rep. 433, in which the supreme court of Kentucky hold

generally that in an action against a carrier to recover damages for delay in this shipment of a corpse, there may be a recovery for mental suffering. In this case a husband was taking the dead body of his wife to another city for burial. By mistake the body was shipped in another direction.

This decision seems to extend the rule permitting a recovery for mental suffering alone, unaccompanied by any physical injury. This rule is exceptional and has included so far only what are styled Telegraph Cases. These cases permit a recovery for mental anguish against a telegraph company for failure to deliver with promptness messages announcing the death or mortal illness of near relatives. It is sustained by decisions in Indiana, Iowa, North Carolina, Tennessee and Texas. Whether this rule shall be extended to cases where a carrier fails to properly deliver a corpse is an interesting question. The court's argument in the principal case is very strong in favor of the extension of the rule. The court says: "No sound distinction can be maintained between the Telegraph Cases and this case. They rest upon the principle that damages naturally resulting from a wrongful act, and fairly within the reasonable contemplation of the parties, may be recovered. The logic of appellant's position, if followed, would lead to the conclusion that if it had lost this corpse, however negligently, no action could be maintained, at least for any substantial recovery. For if there is no property in a corpse, and there can be no recovery for mental suffering for the failure to carry and deliver it at the proper time, then for a very great wrong there would be practically no remedy. The tenderest feelings of the human heart cluster about the remains of the dead. The duty of Christian burial is one which loving hands perform as a privilege. An indignity or wrong to a corpse is resented more quickly than a wrong to the living, and, if mental suffering may be recovered for in the one case, it is hard to see why it may not be recovered for in the other. The damages for the loss of a corpse and those for the delay in delivering it differ only in degree. In actions for breach of a marriage contract, damages for mental suffering are allowed because these are the natural result of the defendant's wrong, and in no other way can proper compensation for it be had. The same rule must apply in actions for negligence in carrying a corpse, if the carrier is to be held to proper responsibility in this class of cases."

The authorities seem persuaded by the strength of this argument and tend in the same direction. *Hale v. Bonner*, 82 Tex. 33, 17 S. W. Rep. 605, 14 L. R. A. 336, 27 Am. St. Rep. 850, which was a suit for damages for delay in the shipment of a corpse.

APPEAL AND ERROR—WHETHER EX PARTE ABSTRACT OF TESTIMONY IS GOOD AGAINST OPPOSITE PARTY WHO MAKES NO OBJECTION UNTIL AFTER HEARING.—It is the rule in nearly every state to permit an abbreviated statement of

the record for use upon appeal. These provisions for shortening the record vary in different states, but the ultimate aim of all of them is to bring before the appellate court only the necessary parts of the record and the evidence. The question is whether, after such abstract or short transcript has been made by appellant and his approval secured, the court, *sua sponte* or on the objection of the other party, can declare the record imperfect and dismiss the appeal or go back to the original transcript. In a recent case in the court of appeals of the District of Columbia, the members of the court are not agreed on one phase of this question. The majority opinion holds that an *ex parte* abstract of the testimony upon which a cause was heard in the court below, made by counsel on one side after the hearing and determination of the cause by that court and after appeal from its decree, cannot, over the objection of the opposing counsel, be regarded as a proper substitute for the testimony of the record, no matter how faithfully such abstract may reproduce the substance of such testimony, and notwithstanding the fact that before being filed in the court below a copy of such abstract was submitted to counsel for the appellee and no objection then made him nor designation of other parts of the record testimony to be included; and such abstract of the testimony cannot be considered by this court on the hearing of the appeal. It might be mentioned that the rules of this court are not as liberal in this direction as some others and provide, simply, that counsel for the appellant may designate what parts of the record shall be certified to the appellate court. This provision would not seem, it is true, to justify the action of the appellant in making the abstract, but whether respondent's failure to object until the time of hearing does not remedy this defect, is doubtful. Mr. Justice Sheppard, dissenting in this case, thinks it does. He said in part:

"Taking a very broad, and what must be conceded to be an erroneous, view of the scope of this amended rule, the counsel for the appellant, instead of designating parts or the depositions on file for copy, made what is practically conceded to be a fair condensation of the answers contained in the said depositions, omitting the questions and other irrelevant matter, and directed the clerk to include it in the transcript as the evidence in the case. Counsel for the appellee, though duly served with notice of this designation, made no objection and filed no designation on his own behalf. The clerk, assuming this to indicate the consent of the appellee, made up the transcript as directed by the appellant. Now, had the appellee made an objection, or notified the clerk of his want of assent to the statement of the evidence, that officer, it must be presumed, would not have certified a transcript containing it. Instead of objecting or signifying his dissent, appellee stood by and permitted the transcript to be certified and sent up. After the transcript was lodged in this court the appellee could have moved to dis-

miss, accompanied by an affidavit pointing out the inclusion of a paper foreign to the record without his consent. Had such motion been made, it must have prevailed. In that event, an opportunity would remain to the appellant to perfect his record for hearing. But no such action was taken. The appellee maintained silence. He stood by and permitted the appellant to print the record and prepare for its submission on brief and argument. On the argument he made a suggestion merely of the defect in the record. Under these circumstances, I am of the opinion that this court ought to indulge the presumption that the statement of the evidence was prepared and substituted for the depositions themselves, with the consent of the appellee, and that the presumption can not be rebutted by a mere suggestion made on the argument, when it is too late to repair the injury done by the rejection of the record."

We are inclined very strongly to approve the position taken in the dissenting opinion in this case. The time was thought to be long since past when a case might be thrown out of court on the merest technicality. The appellate court is interested in getting the record before it in the simplest possible form and the duty naturally devolves upon the appellant to furnish such a record. It is no easy task for an appellant, be he ever so unprejudiced and fair, to know just what is absolutely necessary to incorporate in the record and what is not. In order to protect the appellant, the general practice has been to secure the respondent's approval before the publication or filing of the abstract or abbreviated record. It would seem only fair to the appellant that both the respondent and the court should be bound by the record under such circumstances.

PROPER DESCRIPTION OF LAND IN DEEDS AND DOCUMENTS.

Whenever the description of land in a deed is general in its terms, or lacking in detail, much perplexity and uncertainty arises as to the validity of the instrument. The general rule is, that if the description of the land, intended to be conveyed, is such that the premises can be ascertained and identified, it is sufficient to pass title, even though errors or inconsistent statements are made.¹ "A deed need not show upon its face the limits, or quality of the estate granted, if it refers to certain objects, by which such limits can be ascertained,"² and when the description refers

¹ Vose v. Bradstreet, 27 Me. 156; Bosworth v. Sturtevant, 2 Cush. 392; Lyman v. Loomis, 5 N. H. 408; Mason v. White, 11 Barb. 173; Eggleston v. Bradford, 10 Ohio, 312; Andrews v. Pearson, 68 Me. 19; Farris v. Gilbert, 60 Tex. 350.

² Nelson v. Brodback, 44 Mo. 596, 100 Am. Dec. 328; Rupert v. Penner, 35 Neb. 587, 53 N.W. Rep. 698, 17 L. R. A. 824; Redd v. Murray, 95 Cal. 48, 30 Pac. Rep. 132;

to another deed, map, or survey, it has the effect to incorporate such deed, map, or survey into the description, the same as if copied into the deed itself: and whatever is therein described will pass."³ Thus, a deed, describing the land by courses and distances, with the additional words, "being the same premises conveyed to A. the grantor, by B, by deed dated, etc." was held to convey the whole premises in that deed, although the description omitted a small strip,⁴ and "where no other description is given of the lands sold than by number of lots in the survey of the tract of land or plat, it is as much a part of the deed as though set out in it."⁵ But where the words employed, even by reference to the records, plats, or certain known objects, fail to describe the premises in such a manner as to make it certain which tract was intended to be conveyed, the deed is void for uncertainty.⁶ A description of land in a deed, which is uncertain as to the place of beginning of its boundaries is void, because it transfers no particular spot of ground, and can give no title,⁷ yet, where the place can be ascertained in some way, by extrinsic evidence, the conveyance will be sustained.⁸ Cases arise where the land is designated by a certain name, such

as, "the Maple Shade Farm," and it is shown to be known, by the parties to the deed and residents in the neighborhood, by such name. This will be sufficient to pass title.⁹ However, where the description is such that it cannot be shown which tract was intended to be conveyed,¹⁰ or, if it call for a tract that has no existence, the deed is void.¹¹ Land described as that adjoining the land of certain persons,¹² or certain places, is not void for uncertainty, when it can be shown which tract was intended.¹³ The same rule applies when the description reads, "that occupied by the grantor," as in the case of *Smith v. Greaves*,¹⁴ where a description of land, as "that on which the grantor lives," stating the quantity and general location, is sufficient, there being no other land in the neighborhood, belonging to the grantor, although a deed to which the grantor refers for a more particular description never was in fact, executed. Again, in the case of *Chouteau v. Jones*,¹⁵ a deed, describing the premises as two sections of land in Marine Settlement, state of Illinois, and patented to John Rice Jones, was held sufficiently definite, since such locality is well known, and it can be ascertained, by an examination of the records, which two sections of land were patented to the grantor. We also find land described, as in the case of *Harris v. Broiles*,¹⁶ where the property con-

Coats v. Taft, 12 Wis. 384; *Saunders v. Schmaelzle*, 49 Cal. 59; *Sanders v. Ransom*, 37 Fla. 457; *Charter v. Graham*, 56 Ill. 19; *American Immigrant Co. v. Clark*, 62 Iowa, 182, 17 N. W. Rep. 483; *Moses v. Morse*, 74 Me. 472; *Phelps v. Phelps*, 17 Md. 120; *Allan v. Bates*, 23 Mass. 400; *Doe v. Whitney*, 147 Mass. 1, 16 N. E. Rep. 722; *Campbell v. Morgan*, 68 Hun. 490, 22 N. Y. Supp. 1001. Same rule by reference to maps or plats: *Deery v. Carey*, 77 U.S. (10 Wall.) 263; *Federal Case*, No. 11,249; *Garwood v. Hastings*, 38 Cal. 216; *Sanders v. Ransom*, 37 Fla. 457; *Warden v. Williams*, 24 Ill. (14 Peck.) 67; *Daily v. Letchfield*, 10 Mich. 29; *Slosson v. Hall*, 17 Minn. 95; *Seully v. Sanders*, 44 N. Y. Super. Ct. (12 Jones N. S.) 89.

³ *Clamorgan v. Hornsby*, 6 S. W. Rep. 651; *City of Alton v. Ill. Trans. Co.*, 12 Ill. 38; *Vance v. Fore*, 24 Cal. 44; *Boylstyn v. Carver*, 11 Mass. 515; *Lippett v. Kelley*, 46 U. S. 523; *Allan v. Taft*, 6 Gray, 552; *Powers v. Jackson*, 60 Cal. 429, 450; *Sanborn v. Mueller*, 35 N. W. Rep. 606.

⁴ *Wuesthoff v. Seymour*, 22 N. J. Rep. Eq. 66; *Auborn Church v. Walker*, 124 Mass. 69.

⁵ *Dolde v. Vodecka*, 49 Mo. 100.

⁶ *Brandon v. Leddy*, 67 Cal. 43, 7 Pac. 33; *People v. Klumpke*, 41 Cal. 263; *Holme v. Strautman*, 35 Mo. 293; *Jackson v. Ransom*, 18 Johns. 107.

⁷ *Mann v. Taylor*, 49 N. C. (4 Jones Law.) 272, 69 Am. Dec. 750; *Lombard v. Aldrich*, 28 Am. Dec. 381; *Grant v. Hunsucker*, 55 Am. Dec. 408 and 414; *Prye v. Prye*, 109 Ill. 466.

⁸ *Holston v. Needles*, 115 Ill. 461, 5 N. E. Rep. 230; *Allan v. Sallinger*, 108 N. C. 159, 128 E. Rep. 896; *Dauthit v. Robinson*, 55 Tex. 69.

⁹ *Dow v. Jewell*, 18 N. H. 340, 45 Am. Dec. 371; *Lennig's Exrs. v. White*, 20 S. E. Rep. 831; *Harkey v. Cain*, 69 Tex. 146, 6 S. W. Rep. 637; *Charles v. Patch*, 87 Mo. 450; *Whitney v. Buckman*, 73 Cal. 536; *Hayley v. Amestoy*, 44 Cal. 132; *Gwynn v. Thomas*, 2 Gill & J. 420; *Vaughn v. Swayzie*, 56 Miss. 704; *Paroni v. Ellison*, 14 Nev. 60; *Coleman v. Manhattan Beach Imp. Co.*, 94 N. Y. 229.

¹⁰ *Blessing v. House's Lessee*, 3 Gill & J. 290.

¹¹ *Carter v. Barnes*, 26 Ill. 455; *Boyd v. Ellis*, 11 Iowa, 97.

¹² *McGlawhorn v. Worthington*, 98 N. C. 199, 3 S. E. Rep. 633; *Bell v. Dawson*, 32 Mo. 79; *Lewis v. Owen*, 64 Ind. 446; *Hanley v. Blackford*, 31 Ky. (1 Dana.) 1; *Harris v. Ewing*, 21 N. C. (1 Dev. & B. Esq.) 369; *Harrell v. Butler*, 92 N. C. 20; *Hinton v. Roach*, 95 N. C. 106.

¹³ *Simpson v. Blaisdell*, 85 Me. 199, 27 Att. Rep. 101, 35 Am. St. Rep. 348; *Bell v. Dawson*, 32 Mo. 79; *Dickenson v. Barnes*, 79 N. C. 490.

¹⁴ *Brown v. Oldham*, 123 Mo. 621, 27 S. W. Rep. 409; *Slack v. Dawes*, 3 Tex. Civ. App. 520, 22 S. W. Rep. 1053; *Stafford v. Lick*, 10 Cal. 12; *Smith v. Greaves*, 83 Tenn. 55, 56 Lea, 459.

¹⁵ *Choteau v. Jones*, 11 Ill. 1 Peck 300, 50 Am. Dec. 460; *Dunn v. Tousey*, 80 Ind. 288; *Hogan v. Page*, 22 Mo. 55; *Harkness v. Devine*, 73 Tex. 628, 11 S. W. Rep. 872.

¹⁶ *Harris v. Broiles*, (Civ. App.) 22 S. W. Rep. 421; *Barnes v. Bartlett*, 47 Ind. 98; *Austin v. Dolbee*, 101

veyed was described as, "all that certain interest in the landed estate of A and B, deceased, to which we are, or may be entitled by gift, devise, descent, or otherwise," which was held sufficient to pass the interest. Natural and artificial boundaries are sometimes resorted to in describing land, which is well illustrated by the case of *The United States v. Peralta*, where the land was designated as beginning at a certain point on the Bay of San Francisco and running from the bay eastwardly along by the southern base of the Cerritos of San Antonia, up a ravine, at the head of which there is a large rock, or monument, thence by the southern base of said rock, to the comb or crest of the coast range of the mountain of the Sierra, which was held sufficient.¹⁷

We also come in contact with a line of cases where the description fails to state the county, or state in which the land is located and here we must resort to any fact or circumstance by which the mind can be convinced as to which tract was intended to be conveyed, instead of treating the description as a patent ambiguity. To illustrate: In the case of *Garden City Sand Co. v. Miller*,¹⁸ a deed describing the land by section, township and range, which failed to state the county and state, but described the grantor as being of the county and state, wherein he owned the land, answering the description in the deed, and under which the grantee had taken possession. The court held that these facts, all considered, were sufficient to pass the title from the grantor to the grantee. Again in the case of *Mee v. Bennett*,¹⁹ it was held that though a deed fail to recite in what state the land described by section and town is situated,

and though the grantor's acknowledgment be taken in a foreign state, yet where the certificate of the official character of the notary was appended to the acknowledgement, and the deed is recorded in the county where the land, in fact, is located, the land is sufficiently identified. However, rules pertaining to the construction of indefinite descriptions of land, in failing to state the county and state, largely depend upon surrounding circumstances, and, therefore, a useful collection of cases are cited in the notes.²⁰

In further discussing descriptions, we come to instances, where the name of the tract has been misspelled, and in such cases a clerical error will not vitiate the deed, where the intent of the parties can still be ascertained with certainty from the instrument, when considered in connection with the situation of the parties and the subject matters. I quote from *Huddleson v. Reynold's Lessee*.²¹ "A mistake in spelling a name does not vitiate an instrument in writing, if the word misspelt resembles in sound or sense, the right name," but where the name, misspelt, has not the same sound or sense of the right name, the description is unintelligible, and fails to pass the title.²² Lastly, a description in deeds, worded as "all the property of the grantor" and often limited to city, county, or state, has been passed upon by various courts, and

Mich. 202, 59 N. W. Rep. 608; *Patterson v. Snell*, 67 Me. 559; *Stewart v. Cage*, 59 Miss. 558; *Moses v. Peak*, 49 N. C. 520; *Walker v. Moses*, 123 N. C. 527, 18 S. E. Rep. 339; *Munnink v. Jung*, Tex. (Civ. App.) 385, 32 S. W. Rep. 293; *Emerick v. Alvarado*, 90 Cal. 444, 27 Pac. 356.

¹⁷ *U. S. v. Peralta*, 60 U. S. (19 How.) 343; *Desjardins v. Thunder Bay River Boom Co.*, 95 Mich. 149, 54 N. W. Rep. 718; *Cox v. Hart*, 145 U. S. 376; *Havens v. Dale*, 18 Cal. 359; *Hartshorn v. Wright*, Fed. Case, 6169; also 59 Fed. 542; *Stanley v. Green*, 12 Cal. 148; *Pence v. Armstrong*, 95 Ind. 191; *Bryan v. Wisner*, 44 La. Am. 832; *Cilley v. Childs*, 73 Me. 130; *Ward v. Bartholomew*, 23 Mass. (6 Peck.) 409; *Barnam v. Banks*, 45 Mo. 349; *Nye v. Moody*, 70 Tex. 434, 8 S. W. Rep. 606; *Examine La Franc v. Richmond*, Federal Case 8209.

¹⁸ *Garden City Sand Co. v. Miller*, 157 Ill. 225, 41 N. E. Rep. 753.

¹⁹ *Mee v. Bennett*, 98 Mich. 260, 57 N. W. Rep. 175, 39 Am. St. Rep. 543, 22 L. R. A. 641.

²⁰ *McCullough v. Olds*, 108 Cal. 529, 41 Pac. Rep. 420. A deed having the following descriptions. "A tract or tracts of land, lying and being in the water of Crowder Creek, in the tenth, Civil District in Lawrence Co. in Range 5, sec. 1, the deed was acknowledged before the clerk of Lawrence county, Tenn." Held not void for insufficient description of land conveyed, in that the state in which it was situated was not mentioned in the body of the deed. *Colton v. Lewis*, 119 Ind. 181, 21 N. E. Rep. 475; *Beal v. Blair*, 33 Iowa, 318. A deed describing the land by subdivision, number of the section, township and range is not void for uncertainty though not specifying county or state. *Carson v. Railsback*, 3 Wash. Ter. 168, 13 Pac. Rep. 618; *Russell v. Swezey*, 22 Mich. 235; *Hawkins v. Hudson*, 45 Ala. 482. A deed which designates the land by section, township and range, but omits the county and state, is not void for uncertainty. *Hanna v. Renfro*, 32 Miss. 125. The omission in a deed to designate the county in which the lands lie, will not render the deed inadmissible as evidence. *Norfleet v. Russell*, 64 Mo. 176. A deed which omits from the description the town, county and state, the grantee acquires an equitable interest. 41 Iowa, 660; *Alexander v. Knox*, Fed. Case. 170; *Webb v. Mullins*, 78 Ala. 111; *Long v. Wagoner*, 47 Mo. 178; *Howe v. Williams*, 51 Mo. 252.

²¹ *Huddleson v. Reynold's Lessee*, 8 Gill. 332, 50 Am. Dec. 702; *Mathews v. Eddy*, 4 Oreg. 225.

²² *Gano v. Aldridge*, 27 Ind. 294.

in the case of *Frey v. Clifford*,²³ it was held that a quitclaim deed of "all my right, title and interest in Sacramento City, upper California, property, consisting of two lots and buildings thereon," passed the grantor's interest in his lots at Sacramento. Descriptions of this sort have universally been held sufficient, as will be seen by reference to the notes.²⁴

In construing such descriptions, which are general, or which are lacking in detail, or which refer to some known object, parol evidence is, of course, admissible to explain them, by showing the surrounding circumstances under which the instrument was executed,²⁵ the meaning of technical terms,²⁶ and location of certain objects;²⁷ but such evidence will not be permitted to contradict the language in the deed.²⁸ "The court in so doing," says an eminent writer, "must place itself as nearly as possible in the situation of the parties, and their intention is to be de-

ducted from the instrument of conveyance, as in the case of any other contract."²⁹ If the intent is not then apparent, resort is to be had to the rules of construction, which give greater effect to those things about which the law presumes the parties are least liable to make a mistake. But arbitrary rules are not to be invoked if the intention of the parties can be plainly discovered without their aid."³⁰ The parties are supposed to contract with reference to the actual state of the property, at the time of the conveyance, unless it is expressly stipulated that some other time is intended;³¹ and the intention of the parties may sometime be ascertained by reference to extrinsic facts, such as contemporaneous writings, relating to the subject-matters, prior deeds, by which the title has come down, and writings contemporaneous therewith.³²

An infinite number of such descriptions, as have been heretofore treated, arise and many have been passed upon by various courts of the land from which the general rules have been deducted. It is impossible to cover more than general doctrines governing such cases, because the descriptions are seldom alike, and the validity or uncertainty of the special case must be determined by the foregoing principles. The courts will not hold an instrument inoperative when it can be made certain,³³ nor will they frustrate the intent and purpose of the deed, when it can be construed with certainty to accomplish the purpose intended,³⁴ and perhaps to the general practitioner, in passing upon questions of this sort, no better rule can be followed than the maxim: *Id certrum quod certrum reddi potest.* (That is certain which can be made certain.)³⁵

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²³ *Frey v. Clifford*, 44 Cal. 335; *De Levillian v. Evans*, 39 Cal. 120.

²⁴ *Carson v. Ray*, 52 N. C. 600, 78 Am. Dec. 267. *Stambaugh v. Smith*, 23 Ohio St. 584. A deed conveying all the grantor's land and real estate in South Carolina, is sufficiently certain. *Sally v. Gunter*, 13 Rich. Law. 72 45, Am. Dec. 296. A deed describing land as: "All the right of W in and to 35 acres in a specified section," with no further description is sufficient to pass title, parol evidence being given to identify the land. *Bank of Mo. v. Bates*, 17 Mo. 583; *Harvey v. Edens*, 69 Tex. 420, 6 S. W. Rep. 306; *Brigham v. Thompson*, 12 Tex. Civ. App. 562, 34 S. W. Rep. 358; *Fitzgerald v. Libby*, 142 Mass. 235, 7 N.E. Rep. 917. A deed conveying all the vendors' lots in a certain town is sufficiently certain to convey all the vendors' interest derived by a deed from the commissioners who laid off the town. A deed purporting to convey all lands, wherever situated belonging to the grantor sufficiently describes lands shown to have belonged to him at the time of the execution of the deed. 63 Cal. 396; *Bird v. Bird*, 40 Me. 396; *Brown v. Warren*, 16 Nev. 228. "My house and lot in town of Jefferson county and state." The grantor having house and lot in that town. Held to be a sufficient description to pass title. Where a deed conveys in general terms, all the lands of the grantor and each of them, this can be made certain as to the lands conveyed, by proof of what lands the grantors owned, and constitute a good description.

²⁵ *Greenl. on Evi. secs. 295, 298*; *Hutchins v. Dickson*, 11 Md. 29; *Stanley v. Green*, 12 Cal. 148; *Abbott v. Abbott*, 53 Me. 356. Also see *Jones on Evidence*, sec. 496.

²⁶ *Eton v. Smith*, 20 Pick. 150; *N. J. Zine Co. v. Boston Franklinit Co.* 15 N. J. Eq. 418. Also see *Jones on Evi.*, sec. 496.

²⁷ *Colcord v. Alexander*, 67 Ill. 583; *Fuller v. Carr*, 33 N. J. L. 157; *Putzel v. Van Brunt*, 40 N. J. Sup. Ct. 501. (See 1 *Greenl. on Evi.*, secs. 295, 298. Also see *Jones on Evi.*, sec. 496.

²⁸ *Means v. Presby. Church*, 3 Watts & S. (Pa.) 303; *Hall v. Davis*, 36 N. H. 509; *Stowell v. Bonswell*, 135 Mass. 340.

²⁹ *Long v. Wagoner*, 47 Mo. 178; *Stanley v. Green*, 12 Cal. 148.

³⁰ *Kimball v. Semple*, 25 Cal. 449.

³¹ *Commonwealth v. Roxbury*, 9 Gray, 493; *Abbott v. Abbott*, 51 Me. 581; *Moore v. Griffin*, 22 Me. 350; *Carmmueller v. Krutz*, 18 Iowa, 356; *Lane v. Thompson*, 43 N. H. 324.

³² *Putzel v. Van Brunt*, 40 N. Y. Sup. Ct. 501.

³³ *Hoffman v. Mackall*, 5 Ohio St. 123; *Ganns v. Aldridge*, 27 Ind. 294; *Anderson v. Baughman*, 7 Mich. 69.

³⁴ *City of Alton v. Ill. Trans. Co.*, 12 Ill. 38; *Holsten v. Needles*, 5 N. E. Rep. 530.

³⁵ 2 Bl. Com. 143, 1 Bl. Com. 78, 4 Kent's Com. 462, *Broom Max.* 624.

USURY—ESTOPPEL OF PRINCIPAL TO PLEAD
USURY AGAINST SURETY.

BLAKELEY v. ADAMS.

Court of Appeals of Kentucky. May 23, 1902.

In an action on a note executed by the obligor to reimburse the payee for money paid as the obligor's surety, the obligor is not estopped to plead that the debt paid by the surety embraced usury, and to resist a recovery to that extent, unless it is made to appear that he stood by and permitted the surety to pay the debt in ignorance of the fact that it embraced usury.

BURNAM, J.: This action was brought by the appellee, John C. Adams, against W. H. Blakeley and wife, Hettie S. Blakeley, upon a note for \$3,908.35, dated April 3, 1900, and due one year after date, and secured by a mortgage upon three separate tracts of land. He alleges that the consideration of the note was the payment by him of judgments which were rendered against him as security for the defendants. The appellant, Hettie S. Blakeley, charges that the debts contained a large amount of usury, which had either been paid or added to the principal at the renewal, and prays that all claims be purged of usury. Appellee interposed a general demurrer to the answer, which was overruled, and subsequently filed a reply. In the third paragraph he denied that there was any usury in the debts which made up the note sued on, but says that, even if they contain usury, appellant is estopped from claiming or pleading it by the execution of the obligation sued on. The affirmative averments of the reply were denied by rejoinder, and appellant denies that she is estopped from pleading usury by the execution of the note. A general demurrer was sustained to the rejoinder, which was carried back to the answer, and a judgment rendered in accordance with the prayer of plaintiff's petition.

The law is well settled that a surety to a contract tainted with usury can avail himself of the defense of usury to the same extent that his principal could, and if he pays such debt with knowledge of its usurious character he cannot recover such usury from the principal, but can only recover what the creditor could have recovered either against the principal or surety. He stands in no better attitude, but is entitled to recover such usury back from the creditor if he so elects. See *Brandt, Sur.* 215; *Jones v. Joyner*, 8 Ga. 532; *Mims v. McDowell*, 4 Ga. 182; *Whitehead v. Peck*, 1 Kelly, 140; *Kirkpatrick v. Wherritt*, 46 Ky. 388. In the latter case it was expressly held that a surety who had paid usury for his principal had the right to sue for and reclaim it from the creditor, unless he had been repaid it by his principal. And this court in a long line of decisions has held that the renewal of a note tainted with usury is not a payment of the usury, and that limitation as it does not then begin to run. See *Rudd v. Bank*, 78 Ky. 513; *Fitzpatrick v. Apperson's Exrs.*, 79 Ky. 272. But it is contended that, by the execution of the note sued on by appellants to appellee in payment of the various notes

taken up by him as surety, they have lost their right to have the usury purged from the notes; and to support this contention we are referred to the cases of *Breckenridge v. Churchill*, 26 Ky. 11; *Stone v. McConnell*, 62 Ky. 54; *Clark v. Rodes*, 75 Ky. 13; *Kendall v. Crouch*, 88 Ky. 199, 11 S. W. Rep. 587; *McCrae v. Gunter's Exrs.* (Ky.), 18 S. W. Rep. 1034, and *Mann v. Bank*, 104 Ky. 852, 48 S. W. Rep. 413.

The facts in the case of *Breckenridge v. Churchill*, were as follows: Gwathmey and Anderson owed Churchill \$2,596. Churchill was indebted to Alexander S. Bullitt, as guardian of Eliza Prather, and at his instance Gwathmey executed his note to Bullitt with Breckenridge as his surety, in consideration of the note of Anderson and Gwathmey and in discharge of the debt due by Churchill to Bullitt. Gwathmey became insolvent, and Breckenridge was compelled to pay to appellee the whole amount of the note. He thereupon filed a bill in chancery against Churchill and Bullitt to obtain relief in consequence of the usury contained therein. It was held that the execution of the new note to Bullitt was a payment and discharge of the Churchill note, and that, the assignee having received the first note from his assignor for a valuable consideration, it was not contaminated with usury, as by taking the new note he discharged the surety and released his assignor from liability. In *Stone v. McConnell*, it was held that where a grantor assigned to her ward on his arrival at age a note on which usurious interest had been paid to her, and which one of the obligors subsequently took up by executing a new note to the ward, in an action by the latter on the new note the defendants could not set up usury paid the grantor. In *Clark v. Rodes*, it was held that, as between the maker and payee of a note, a judgment thereon in favor of the assignee against the maker which released the assignor from liability on his assignment was equivalent to the execution of a new note by the maker to the assignee, and that the right of the maker to sue the original payee and recover usury contained in such note accrued at the time the judgment was rendered against him. It will be observed that, in all these cases, the assignee was an entire stranger to the original transaction between the payee and obligor, and acquired the obligation for a valuable consideration, and it was held that the renewal of his obligation by the maker to the assignee released the assignor and was a new contract with a new party, which merged his claim for usury. The facts in the case at bar are wholly different from those in any of these cases. There is no question of the rights of a party who was a stranger to the original transactions, and who acquired the original notes for a valuable consideration. No new party was introduced by the execution of the last note; no new consideration passed. The payee in the previous notes was simply dropped out, and the name of the former surety substituted therefor. This arrangement did not deprive appellee of any of the

rights previously enjoyed by him, and created no new equities in his favor against the appellants. In *Fitzpatrick v. Appersons Exrs.* 79 Ky. 272. it was held that the mere change of the payee or a part of the obligors by renewal was not a payment of usury, and, if usury in the old debt be carried into the new obligation, so as to constitute a part of the sum agreed to be paid by it, the usury should be extracted on plea of the debtor. And the same doctrine was announced in *Kendall v. Crouch*, 88 Ky. 199, 11 S. W. Rep. 587; *Shirley v. Stephenson*, (Ky.) 47 S. W. Rep. 581; *Hart v. Hayden*, 79 Ky. 346. In the latter case it was held that, if the fact that the claim was tainted was disclosed by the record, the chancellor should purge the claim of such usury, although the debtor refused to make the defense. It is very earnestly insisted, however, that the question here involved was decided in *McCrae v. Gunter's Exrs.* (Ky.) 18 S. W. Rep. 1034, and *Mann v. Bank*, 104 Ky. 852, 48 S. W. Rep. 413. An examination of these cases will show the facts to be wholly different. In *McCrae v. Gunter's Exrs.*, the surety on a note which was secured by a mortgage paid it off at the express request of the principal with the accrued usurious interest, and took a mortgage from the principal to indemnify him; and it was held that the usury would not be purged at the instance of the junior mortgagee, who occupied no better attitude than the original debtor, and that the original debtor, when he indemnified the surety, had a remedy for his usury against the original creditor. The facts in the case of *Mann v. Bank* were very similar. In that case the debtor, Mann, sold a tract of land owned by him to Mimms, the surety, in consideration that the surety would pay off a debt to the bank on which he was bound. He did so, and Mann thereupon instituted a suit against the Bank of Elkton to recover usury which he had paid on the notes taken up by Mimms. It was held that he was entitled to recover against the bank for usury previously paid by him to it on the debt so paid by his surety. It is not pleaded in this case that the appellant Hettie S. Blakeley or her husband ever requested appellee to take up the notes on which he was bound as their security. On the contrary, it appears from the reply filed in the case that the judgments were rendered against the appellee in a suit instituted by him for their settlement against the creditors, and no judgment was ever rendered against Hettie S. Blakeley. No question of usury was involved in that case. The only purpose in the reference to the master commissioner was to ascertain the debts on which the appellant Hettie was bound, which were covered by the mortgages in which she united.

If a principal requests his surety to pay a debt which contains usury, or stands by and permits him to do so in ignorance of the fact that it contains usury, and thereafter executes his own obligation to the surety, he cannot rely upon the defense of usury in an action against him by the surety for indemnity; nor can a principal set off,

against a note which has been paid by his surety, previous usurious interest paid by him to the creditor of which the surety had no notice. But if usury was knowingly paid by appellee, the mere fact that appellants subsequently executed a note therefor will not estop him from relying upon this defense.

For reasons indicated, the judgment is reversed, and cause remanded for proceedings consistent with this opinion.

NOTE.—Persons Against Whom Usury May be Pleaded.—The latest authorities on this question are interesting. Thus, where a debtor borrowed money from the daughter of his creditor to pay his debts to their father, and afterwards borrowed money from their mother to pay the debt to them, he cannot recover from the mother usury paid to the daughters or their father, the transaction being in good faith, and in fact a loan of money by the mother to the debtor. *Stephenson v. Shirley* (Ky. 1901) 60 S. W. Rep. 387. Also, where a non-negotiable instrument has come into the hands of an innocent purchaser, and the maker thereafter voluntarily gives him a negotiable note as a substitute for the first which was usurious, the original usury cannot be pleaded against the new obligation. *McFarland v. State Bank*, 7 Kan. App. 722, 52 Pac. Rep. 110.

Usurious agreements and acts of the original parties to a note, made or performed after they had parted with the note for value, such as withholding a part of the original consideration which had not been paid, cannot affect the note with usury in the hands of a purchaser who was not a party to their agreements or acts. *Seymour Opera House Co. v. Thurston*, 18 Tex. Civ. App. 417, 45 S. W. Rep. 815.

A grantee in a security deed tainted with usury cannot against the maker thereof, convey a good title even to a person who takes *bona fide*, before maturity, for value, and without notice of the fact of usury. *Beach v. Lattner*, 101 Ga. 357, 28 S. E. Rep. 110. But a junior mortgagee cannot, in case of insolvency of the debtor, plead usury against a prior incumbrance. (Ala.) 19 South Rep. 76. So also where a surety on a note for a consideration moving from the principal, assumes the debt, and gives a note in renewal of the old one, neither he nor his heirs can set up usury in the old note to defeat the new one. *Tenny v. Porter*, 61 Ark. 329, 33 S. W. Rep. 211.

A creditor seeking to subject property of his debtor to the payment of his claim may attack a pledge of such property by the debtor on the ground of usury. *Voorhis v. Staed*, 63 Mo. App. 370. So also, a *bona fide* creditor of an insolvent firm may set up usury, as against a preferred creditor, though his attachment lien is acquired after the accrual of the usurious debt. *Hamilton-Brown Shoe Co. v. Mayo*, (Tex.) 27 S. W. Rep. 781.

To the opinion in the principal case, three justices dissented, expressing their disapproval in the following terms: "The statute makes six per cent. the legal interest, and declares all contract for a greater rate void for the excess over the legal interest. The amount loaned, with legal interest, may be recovered; if the lender refuse a tender of the principal with legal interest, before suit brought, he must pay the cost of the suit; and usury which is paid may be recovered from the lender or forbearer, though paid to the assignee; but the statute does not make the surety liable where he has paid the debt for his principal and the principal afterwards reimburses him in

the amount he has paid out. In *McCrae v. Gunter's Exrs.* (Ky.) 18 S. W. Rep. 1034, a note which contained usury was paid by the surety, who took a mortgage from the principal to indemnify him. In a suit by the surety to foreclose the mortgage it was pleaded that there was usury in the debt which the surety had paid. The plea was held bad, although made by a junior mortgagee, and although the principal's right to recover the usury from the creditor was barred by limitation. The court said: "The party receiving the usury is alone responsible, but the endeavor is to make third parties liable, for the reason, doubtless, that time bars the recovery as against the original creditor." See, also, *Deatly v. Ralls*, 3 Ky. Law Rep. 386. That case is not near so strong for the surety as the one before us, for here there is not only a note, but an agreed judgment fixing the amount of the debtor's liability to the surety, and after this, for the first time a plea of usury is presented. The decision rests on the rule universally recognized, that, where the surety pays the debt without notice of usury in it, the principal cannot set up the usury as a defense when sued by the surety for reimbursement. *Ford v. Keith*, 1 Mass. 139, 2 Am. Dec. 4; *Thurston v. Prentiss*, 1 Mich. 193; *Whitehead v. Peck*, 1 Ga. 140; *Jones v. Joyner*, 8 Ga. 562; *Jackson v. Jackson*, 51 Vt. 253, 31 Am. Rep. 688; *Maples v. Cox*, 74 Ga. 701; *Roe v. Kiser* (Ark.) 34 S. W. Rep. 534, 54 Am. St. Rep. 288; 1 *Brandt*, Sur. § 215. The reason for this rule is that the surety pays at the request of his principal, and a man cannot set up usury against one who pays the debt at his request. *Wendlebone v. Parks*, 18 Iowa, 546; *Polhill v. Brown*, 84 Ga. 338, 10 S. E. Rep. 921; *Pence v. Christman*, 15 Ind. 257."

JETSAM AND FLOTSAM

AMENDMENT OF THE BANKRUPT ACT.

One of the last acts of the house of representatives previous to adjournment was the passing of a bill materially amending the national bankruptcy law. There has been considerable opposition to the measure as interpreted by the supreme court, and there are those who favor total repeal. Chairman Ray, of the judiciary committee, who had charge of the bill, said that the committee had received 20,000 communications favoring the principle of the act, and suggesting certain amendments. Manufacturers, merchants, lawyers and judges had been consulted on the question, and but 7 per cent. of those who had replied to the committee's circular of inquiry advised the repeal of the act.

The bill passed by the house amends the law in fifteen particulars to meet defects which, it is said, experience has disclosed. The most important is one to define preference, to meet the supreme court decision in the case of *Pirie v. The Chicago Title & Trust Company*. In this decision the court held that payment made in good faith after actual insolvency, though in due course of trade without intention of making preference, must be surrendered before the creditor who received such payment could prove the balance of his debt. This, said Mr. Ray, who lead the debate for the amended bill, never was intended by the framers of the constitution. Mr. Ray said it was the cause of 90 per cent. of the objections to the law. Four additional grounds for refusing a discharge in bankruptcy also are added. They are: 1. Obtaining property on credit on materially false statements. 2. Making a fraudulent transfer of property. 3. Having been granted or denied a discharge in bankruptcy within

six years. 4. Having refused to obey the order of the court or refused to answer material questions approved by the court.

An additional section was added on motion of Mr. Ray, which provided that when a debtor waived his exemptions he could not thereafter claim them under the law of the state in which he lived. The bill furthermore authorizes the courts to allow additional compensation where the business of a bankrupt is conducted for a limited period by a receiver, marshal or trustee in the interest of the creditors. As a safeguard, and to prevent injustice, it provides that the bankruptcy of a corporation shall not release the officers, directors or stockholders, as such, from any liability under the laws of a state or territory or of the United States. If these officers, by violating the laws of the state, have incurred any liability they are not to be discharged from such liability or obligations. The new measure also shortens the time for the settlement of bankrupt estates.—*Financial Review*.

BOOK REVIEWS.

MILBURN'S CURIOUS CASES.

The law is not all a dry Sahara of legal precedents. Occasionally, the lawyer in his search among the dry bones of the law, comes across oases of pleasant, entertaining and curious reading. At these places he quaffs his thirst and revives his interest in the dry bones on the other side. The man who would bring all these legal oases and sparkling fountains of the law together, thus tending to intoxicate the law student with the very richness of the feast before him, might be considered unwise and extravagant. Such is the serious charge to be preferred by the profession against Mr. B. A. Milburn, a member of the editorial staff of the Edward Thompson Company, in the publication of the volume that has just reached our desk entitled "Curious Cases." The volume is merely a collection of American and English decisions, selected because of their readability, because of the interesting facts and questions of law involved, and because of the breezy and humorous view of the judges who wrote the opinions.

A casual glance through the volume will show that the State of Georgia has undoubtedly furnished the two brightest stars that have ever had place in the galaxy of judicial wit and wisdom. We refer to Justices Lumpkin and Bleckley.

Some of the rich things in this volume is Justice Blandford's characterization of a justice of the peace; Justice Peters on the right of a dog to roam about in order to procreate his species; Justice Manning on how to conduct a bawdy house in a decent manner; Justice Granger on the right of possession in aerolites and other heavenly bodies; Justice Dallas on the right to throw persons overboard to lighten a leaky boat; Justice Dent on whether a preacher should be corroborated; Justice Lumpkin on the origin and history of seals. In the words of Mr. Milburn's dedication we commend this volume to "all lawyers who do not regard the law as a mere means of obtaining a livelihood, and who can find in law-books recreation, amusement, and the mirror held up to nature. Printed in one volume of 441 pages and published by the Michie Co., Charlottesville, Va. 1

HUMORS OF THE LAW.

"Is he a good lawyer?"

"A good lawyer! Why, say! I've known him to prove the truth of what isn't so and not half try."

A group of Representatives were in the cloak-room yesterday telling stories of their experience in court, when Delegate Smith contributed this incident from Arizona, says a Washington newspaper.

Out in one of the border towns a case was in progress, one of the lawyers being an Eastern man who was new to the country.

"Will you charge the jury, your honor?" he asked, when the evidence had been submitted.

"Oh, no, I guess not," replied the judge. "I never charge them anything. They don't know much anyhow, and I let 'em have all they can make."

The following affidavit was filed in the Court of Common Pleas in Dublin in 1822:

"And this deponent further saith, that on arriving at the house of the said defendant situate in the County of Galway aforesaid, for the purpose of personally serving him with the said writ, he, the said deponent, knocked three several times at the outer, commonly called the hall door, but could not obtain admittance; whereupon this deponent was proceeding to knock a fourth time, when a man to this deponent unknown, holding in his hands a musket or blunderbus, loaded with balls or slugs, as this deponent has since heard and verily believes, appeared at one of the upper windows of the said house, and, presenting said musket or blunderbus at this deponent threatened 'that if said deponent did not instantly retire, he would send his (the deponent's) soul to hell' which this deponent verily believes he would have done had not this deponent precipitately escaped."—*Green Bag*.

A lawyer's maid on going to the butchers for some meat brought a dog with her which belonged to the lawyer. The dog took a big piece of meat and run off with it. The butcher said nothing, but that night he called on the lawyer and said:

"Lawyer I want to ask for some advice from you."

"All right; said, the lawyer.

"Well, what would you do if you owned a meat shop and a dog came in and run off with a big piece of meat."

"I would send in a bill to the person that owned the dog to the amount of the meat."

"All right, said the meat man, "here is the bill and it was your dog."

The lawyer handed over the \$2.50 and said nothing more. The butcher was delighted that he got the money so easy. The next day the butcher was horrified to find a bill for \$10 for advice from the lawyer.

An episode has been recalled in the life of the late Justice Field of the U. S. Supreme Court whose temper was of the most irascible kind. He had given instructions to his servant on a certain morning that he was not to be disturbed. Presently there came a ring at the door bell and an aggressive book agent appeared.

"I want to see Justice Field," he said.

"You cannot see him," was the reply.

"I must see him."

"Impossible."

The conversation grew more emphatic, until finally the persistent book agent's demands echoed through the house. At that moment Justice Field, who had been attracted by the altercation, appeared at the head of the stairs.

"William," he said in a fiercely angry tone, "show the brazen scoundrel up to me; if you cannot handle him, I will."

The book agent made no further effort to break into the justice's presence.

Judge Giegerich of the Supreme Court of New York, who has a fine summer home on Staten Island, is very fond of sailing, and a few days ago he invited a friend of his, a lawyer, to go down the bay with him. At the start the wind was quite brisk, but soon freshened into a gale and caused the little craft they were in to toss and roll in a manner that soon caused the lawyer's features to twist into expressive contortions.

Justice Giegerich, noticing his friend's plight, laid a soothing hand on the latter's shoulder and said:

"My dear fellow, can I do anything for you?"

"Yes, your honor," replied the lawyer in plaintive tones, "you will greatly oblige me by overruling this motion."—*Ex.*

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

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1. ABATEMENT AND REVIVAL—Action Against Surety Pending Appeal of Principal.—In an action against sureties on a guardian's bond pending an appeal from a judgment against the guardian, the rendition of judgment on plaintiff's motion held proper.—*Chase v. Wright, Iowa, 90 N. W. Rep. 357.*

2. **ACCORD AND SATISFACTION—Remunerative Donation.**—Where the value of the object given exceeds by one-half the amount of the charges or the value of services, it is necessary that the act of remunerative donation should be passed before a notary and two witnesses.—*Pulford v. Dimmick, La., 31 South. Rep. 579.*

3. **ACKNOWLEDGEMENT—Interest Disqualifying Officer.**—An officer is disqualified from taking an acknowledgment of a mortgage to secure a debt evidenced by a note of which he is the owner.—*Hedblom v. Pierson, Neb., 90 N. W. Rep. 218.*

4. **ADOPTION—Inheritance.**—Under Gen. St. 1873, ch. 57, tit. 25, § 797, held, that an adopted child would not inherit from the adopting parents, in the absence of an affirmative statement to that effect in the statement filed by them.—*Ferguson v. Herr, Neb., 90 N. W. Rep. 625.*

5. **ADVERSE POSSESSION—Intent.**—Where possession of real estate commences under acknowledgment of the right owner's estate, it will be presumed to be in subservience to the rightful interest.—*Collins v. Collieran, Minn., 90 N. W. Rep. 364.*

6. **ADVERSE POSSESSION—License.**—An entry and possession of land under permission of the owner will not ripen into a title by adverse possession.—*Hicks v. Swift Creek Mill Co., Ala., 31 South. Rep. 947.*

7. **AFFIDAVITS—Tax Certificate.**—Where a showing by affidavit is required as to facts which are necessarily matters of information and belief, an affidavit on information and belief is sufficient.—*Leigh v. Green, Neb., 90 N. W. Rep. 255.*

8. **ANARCHY AND SEDITION—Liability of Editors for Inciting to Kill.**—Pen. Code, § 675, authorized punishment of editor of small anarchistic paper, who published article inciting anarchists to kill rulers of nations, and the fact that he was not original author of article made no difference.—*People v. Most, 75 N. Y. Supp. 691.*

9. **APPEAL AND ERROR—Bill of Exceptions.**—Where any matter of which a trial court took judicial notice is incompetent or improper to be considered, the supreme court will reject it on appeal, in determining whether the order complained of is sustained by sufficient evidence.—*State v. Fawcett, Neb., 90 N. W. Rep. 250.*

10. **APPEAL AND ERROR—Deduction of Damages.**—Where the conclusions of law drawn by the trial court present the same questions as are raised by demurrer to the pleadings, the demurrers will not be separately considered by the supreme court.—*Gaslight & Coke Co. v. City of New Albany, Ind., 63 N. E. Rep. 458.*

11. **APPEAL AND ERROR—Equity Appeal.**—Though on an equity appeal, the case is tried *de novo*, unless appellant argues his case, the decree appealed from will be affirmed, without considering the merits.—*Thoma v. Hecker, Iowa, 90 N. W. Rep. 398.*

12. **APPEAL AND ERROR—New Trial.**—Memorandum of the trial court, assigning the reason for an order granting a new trial, not made a part of such order, cannot be considered on appeal, in determining upon what ground the trial court based its order.—*Jenkinson v. Koester, Minn., 90 N. W. Rep. 392.*

13. **APPEAL AND ERROR—Nonjoinder of Parties.**—A vacation appeal, in which one of the parties against whom judgment was rendered, was not included as a party appellant, dismissed as contrary to Burns' Rev. St. 1901, § 647.—*Mellott v. Messmore, Ind., 63 N. E. Rep. 451.*

14. **APPEAL AND ERROR—Objection First Urged on Appeal.**—An objection to a judgment, because it was rendered on the same day on which a motion was entered to strike a part of defendant's answer, cannot be urged first on appeal.—*Chase v. Wright, Iowa, 90 N. W. Rep. 357.*

15. **APPEAL AND ERROR—Presumption.**—Where defendant on appeal does not bring the evidence before the appellate court, the material allegations of the

complaint will be presumed proven.—*Aldag v. Ott, Ind., 63 N. E. Rep. 480.*

16. **APPEAL AND ERROR—Suit on Note.**—Where, in a suit on a note, plaintiff recovered less than its face, and defendant appealed, and the manner in which the sum recovered was arrived at is not certified up, the judgment will be reversed.—*Huff v. Parker, Miss., 31 South. Rep. 833.*

17. **APPEAL AND ERROR—Time of Taking Appeal.**—Under Rev. Codes, § 5605, the written notice of entry of judgment, to be available against appellant, must be served upon him by his adversary, and a service by an appellant upon the respondent does not limit the time for appeal.—*Prescott v. Brooks, N. Dak., 90 N. W. Rep. 129.*

18. **ASSAULT AND BATTERY—Deadly Weapon.**—An indictment for assault with a deadly weapon, "to-wit, a brick" is not insufficient because a brick is not mentioned as a deadly weapon in Code 1892, § 1026.—*State v. Sims, Miss., 31 South. Rep. 907.*

19. **ASSAULT AND BATTERY—Defense.**—The fact that a pupil in a school is severely punished is not a provocation sufficient to justify an assault on the teacher by the father of the child on the succeeding day.—*Walkley v. State, Ala., 31 South. Rep. 954.*

20. **ATTACHMENT—Death of Judgment Debtor.**—Death of judgment debtor after recovery of ordinary money judgment against him dissolves an attachment lien obtained against his property.—*Yankton Sav. Bank v. Gutterson, S. Dak., 90 N. W. Rep. 114.*

21. **ATTORNEY AND CLIENT—Right to Practice.**—Judgment in municipal court, obtained by a person not regularly admitted to practice, held void.—*Kaplan v. Berman, 75 N. Y. Supp. 1002.*

22. **ATTORNEY AND CLIENT—Right to Settle Cause.**—A contingent fee contract with attorneys in a personal injury case, purporting to assign a portion of the claim to the attorneys, held to preclude the client from making a binding settlement of an action commenced by the attorneys, with the adverse party, as to the interest assigned to the attorneys.—*Texas Cent. R. Co. v. Andrews, Tex., 67 S. W. Rep. 923.*

23. **ATTORNEY AND CLIENT—Surety.**—Under the statute prohibiting an attorney from being a surety on any undertaking in any suit or proceeding, an attorney is not liable as to surety on an injunctive undertaking.—*Dennett v. Reisdorfer, S. Dak., 90 N. W. Rep. 138.*

24. **BANKRUPTCY—Partnership.**—Where, pending an action to wind up the affairs of a banking partnership, the partners are adjudged bankrupt, an order directing the property to be turned over to their trustee, and leaving the receiver's claim for his expenses and services to be adjusted and ordered paid by the federal court, is discretionary, and on appeal therefrom should be dismissed.—*State v. German Exch. Bank, Wis., 90 N. W. Rep. 570.*

25. **BANKS AND BANKING—Power to Act as Collection Agent.**—A bank has power to act as agent in the collection and remission of money, though it be due and payable under a lease.—*Knapp v. Saunders, S. Dak., 90 N. W. Rep. 137.*

26. **BANKS AND BANKING—Special Plea.**—In an action against a bank for money deposited by a trustee in his own account, evidence of payment by the bank of checks subsequently drawn by the trustee, relying in good faith on his apparent title to the fund, is inadmissible to a general denial, as such fact, to be available as a defense, must be specially pleaded.—*Union Stock Yards Nat. Bank v. Haskell, Neb., 90 N. W. Rep. 233.*

27. **BENEFIT SOCIETIES—Assessment of Member.**—Where, in an action by the receiver of an insolvent life association to collect an assessment, there was no evidence that the court directing the assessment ever acquired jurisdiction, or that defendant was a member, a verdict in his favor was properly directed.—*Taft v. Pullen, Mich., 90 N. W. Rep. 329.*

28. **BILLS AND NOTES**—Bona Fide Holder. — Where a negotiable note is indorsed before due as collateral for a loan of money, the pledgee without notice is a holder for value.—Connecticut Trust & Safe Deposit Co. v. Trumbo, Neb., 90 N. W. Rep. 216.

29. **BILLS AND NOTES**—Conditional Payment. — Where there is no evidence, in an action on a note, of any compliance with the conditions upon which a payment was made by a third party, it is not error to instruct that defendants, to entitle themselves to credit for such payment, must show that it was unconditional.—Hewitt v. Bank of Indian Territory, Neb., 90 N. W. Rep. 250.

30. **BILLS AND NOTES**—Delivery. — To constitute a complete delivery of a note, it must be made in a manner evincing an intention to part presently and unconditionally with all control over it. — Streissguth v. Kroll, Minn., 90 N. W. Rep. 577.

31. **BILLS AND NOTES**—Recovery of Debt.—Conceding that a promise in a note for compound interest and attorney's fees was not enforceable, such fact held not to affect recovery of the debt. — Marshall Field & Co. v. Oren Ruffcorn Co., Iowa, 90 N. W. Rep. 618.

32. **BILLS AND NOTES**—Signature.—Where, in a suit on a note, defendant denies the signature, under Code § 3640, the note is not admissible in evidence until the authority for the signature is shown.—Marshall Field & Co. v. Oren Ruffcorn Co., Iowa, 90 N. W. Rep. 618.

33. **BOUNDARIES**—Acquiescence. — Where a boundary fence was built on what the parties supposed was the true line, and there was no dispute, and it was not known that there was any uncertainty, no estoppel by contract was shown; and hence no title could be claimed thereby on a possession of less than 20 years.—Peters v. Reichenbach, Wis., 90 N. W. Rep. 184.

34. **BROKER** — Commission. — Where the evidence showed an interest on the part of the broker in the contract of purchase, an instruction that, to entitle him to commissions, he must have acted in good faith, was proper.—Buck v. Hogeboom, Neb., 90 N. W. Rep. 635.

35. **BROKERS** — Commissions. — Real estate broker held entitled to commissions, though his employer does not own the land he had been hired to sell. — Monk v. Parker, Mass., 63 N. E. Rep. 793.

36. **BUILDING AND LOAN ASSOCIATIONS**—Accounting.—Where a borrower's contract with a building association was separate from his subscription for stock, on an accounting held, he was entitled to credit for the withdrawal value only of his stock.—Georgia State Building & Loan Assn. v. Brown, Miss., 31 South. Rep. 911.

37. **BUILDING AND LOAN ASSOCIATIONS**—Loans.—Where one not a member of a building association, which has no right to loan money save to members, accepts a loan and stock issued to him on his application, neither he nor his assignee can be heard to say that the borrower dealt as a stranger.—Bullman v. Citizen's Loan & Building Assn., Wis., 90 N. W. Rep. 199.

38. **BUILDING AND LOAN ASSOCIATION**—Management by Director.—It is not unlawful for a building association to place the business of loaning money in the hands of its directors, such procedure being authorized by law and its articles of association.—Bullman v. Citizens' Loan & Building Assn., Wis., 90 N. W. Rep. 199.

39. **BUILDING AND LOAN ASSOCIATIONS**—Repayment of Loan.—Where a member of a loan association borrows money, surrenders his stock, and stipulates to continue the payment on such shares, such stipulation is without consideration, and the borrower's obligation is discharged by repayment of the loan, with interest.—Kear v. Eastern Building & Loan Assn., Neb., 90 N. W. Rep. 643.

40. **BUILDING AND LOAN ASSOCIATIONS**—Usury.—Inasmuch as the statutes allow building associations to adopt fixed rates of interest and premiums on loans, contracts on such a basis are not invalid.—Bullman v. Citizens' Loan & Building Assn., Wis., 90 N. W. Rep. 199.

41. **CARRIERS**—Connecting Lines.—Railway company, receiving goods for shipment beyond its line and collecting the entire charge for transportation, assumes the responsibility for safe carriage over every part of the route.—Chicago R. I. & P. Ry. Co. v. Western Hay & Grain Co., Neb., 90 N. W. Rep. 205.

42. **CARRIERS**—Injury to Passenger.—It is an implied condition of railroad companies, as to each passenger, that the latter shall not be put in jeopardy by even the slightest fault of the servants of the company.—Clere v. Morgan's L. & T. R. Co., La., 31 South. Rep. 886.

43. **CARRIERS**—Limiting Liability.—Stipulation in contract for carriage of a horse, limiting liability on injury from negligence, being against the policy of the state, will not be enforced where the injury occurs within the state, though the contract is made outside the state.—Hughes v. Pennsylvania R. Co., Pa., 51 Atl. Rep. 560.

44. **CARRIERS**—Passenger.—A passenger on a railway train does not lose his character as such by leaving the car at a regular station, though he has not yet arrived at the end of his journey.—Chicago R. I. & P. Ry. Co. v. Sattler, Neb., 90 N. W. Rep. 649.

45. **CARRIERS**—Passenger on Platform.—Where a carrier permits its cars to be overcrowded, and requires its passengers to ride on the platforms, it is not liable if the passenger, while so riding, negligently extends his person beyond the car line and is injured.—Benedict v. Minneapolis & St. L. R. Co., Minn., 90 N. W. Rep. 320.

46. **CHAMPERTY AND MAINTENANCE**—Sale of Land.—The doctrine of champerty, which inhibits and makes void a sale in the possession of a third person under claim of right, has no application to judicial sales.—Griffin v. Dauphin, Ala., 31 South. Rep. 849.

47. **CHATTEL MORTGAGES**—Fraudulent Conveyances.—Mortgage on stock in trade held not fraudulent on its face though allowing mortgagors to continue in possession and sell they being required to pay over proceeds.—State v. Fidelity & Deposit Co., Mo., 67 S. W. Rep. 958.

48. **CHATTEL MORTGAGES**—Property Covered. — A mortgage upon a stock of merchandise under the general description attaches only to such merchandise as was in stock when the mortgage was executed, and not to stock afterwards added by purchase.—E. A. Godfrey & Sons Co., v. Citizens' Nat. Bank, Neb., 90 N. W. Rep. 239.

49. **CLERKS OF COURTS**—Moneys Received.—Where clerk of court received in his official capacity money paid into court in condemnation proceedings, held, that he and the sureties on his official bond were liable, where it was lost by failure of bank.—Northern Pac. Ry. Co. v. Owens, Minn., 90 N. W. Rep. 371.

50. **COMMERCE** — Crossing Accident. — Under Code § 2072, a railroad company, though engaged in interstate commerce and in conveying the mail, cannot escape liability for collision resulting from failure to sound the whistle before reaching a crossing, though the whistle was out of order.—Wilfong v. Omaha & St. L. R. Co., Iowa, 90 N. W. Rep. 358.

51. **COMMERCE** — Intoxicating Liquors. — Sale of intoxicating liquors by a traveling salesman in Iowa, to be shipped from Illinois by his principal, held a transaction involving interstate commerce, and that such salesman was not subject to prosecution, under Code, § 2382, as amended by Acts 25th Gen. Assen. ch. 74.—State v. Hanaphy, 90 N. W. Rep. 601.

52. **CONSTITUTIONAL LAWS**—Double Taxation.—Laws 1891, ch. 75, requiring counties to levy a tax to pay for the care of their patients in the insane hospital, held not unconstitutional, as imposing double taxation, though the constitution requires the state to levy taxes to support state institutions.—Bon Homme County v. Berndt, S. Dak., 90 N. W. Rep. 147.

53. **CONSTITUTIONAL LAW**—Statute.—A statute will not be held unconstitutional unless its conflict with the constitution is shown beyond all reasonable doubt.—

Bon Homme Connty v. Berndt, S. Dak., 90 N. W. Rep. 147.

54. **CONTINUANCE**—Affidavit.—Affidavit in support of motion for a continuance on the ground of absence of a witness held not to make a showing so strong as to render a denial of the motion an abuse of discretion.—*Hibbets v. Hibbets*, Iowa, 90 N. W. Rep. 612.

55. **CONTRACTS**—Approval of Engineer.—Answer to complaint in action by contractor on building contract, setting forth that plaintiff has not complied with condition precedent by obtaining engineer's certificate, held good against demurrer.—*National Contracting Co. v. Hudson River Water Power Co.*, N. Y., 63 N. E. Rep. 450.

56. **CONTRACTS**—Drilling for Water.—Party agreeing to drill well, he to receive no compensation unless he found water, held not entitled to drill second hole unless he used reasonable care in drilling the first.—*Peacock v. Gleason*, Iowa, 90 N. W. Rep. 610.

57. **CONTRACTS**—Legal Construction.—It is the province of the court to declare the legal effect of a contract proved by the uncontroverted testimony.—*Hughes v. Rudy*, S. Dak., 90 N. W. Rep. 136.

58. **CONTRACTS**—Licenses.—Where one having a license to conduct a restaurant on another's premises is put out after 10 months, he cannot recover the sum paid for the privilege on the theory that, defendant having committed a breach, the licensee could rescind.—*De Montague v. Bacharach*, Mass., 63 N. E. Rep. 485.

59. **CONTRACTS**—Performance.—Under contract to pay Y, if he shall disclose the whereabouts of B, so as to enable S. to effect his capture, Y. must furnish information of facts actually in existence, which in itself is enough to enable S. to effect the capture.—*Cash v. Southern Exp. Co.*, Ala., 31 South. Rep. 936.

60. **CONVERSION**—Interest of Minor Heir.—Money representing an infant's share in real estate as heirs at law remains real estate while in hands of her guardian, and on her death while a minor remains such in the hands of her administratrix.—*In re McKay*, 75 N. Y. Supp. 1069.

61. **CORPORATIONS**—Assignment of Lease.—Where the members of a lessee partnership form a corporation to carry on the business, and they treat the corporation as having acquired the rights of the firm, in a suit in equity by the corporation on the lease, an assignment of the lease will be presumed.—*B. Roth Tool Co. v. Champ Spring Co.*, Mo., 67 S. W. Rep. 957.

62. **CORPORATIONS**—Contracts.—A written contract may be entered into by a corporation without formal vote, or written entry thereof by its directors, where they are all present and assent thereto.—*Indiana Bermudez Asphalt Co. v. Robinson*, Ind., 63 N. E. Rep. 797.

63. **CORPORATIONS**—Deed of Trust.—A resolution authorizing officers of a corporation to incumber its property by a trust deed, adopted at a meeting without proper notice, where only one director was actually present, who voted for himself and another director by proxy, is void.—*First Nat. Bank v. East Omaha Box Co.*, Neb., 90 N. W. Rep. 228.

64. **CORPORATIONS**—Minority Stockholders.—Minority stockholders of corporation which had been abandoned by its stockholders held entitled to have its assets distributed.—*Noble v. Gadsden Land & Improvement Co.*, Ala., 31 South. Rep. 856.

65. **CORPORATIONS**—Preference to Director.—A director of an insolvent corporation, who has received corporate property in payment of an alleged debt, has the burden of proving the good faith of the transaction.—*Pitman v. Chicago Lead Co.*, Mo., 67 S. W. Rep. 946.

66. **CORPORATIONS**—Report of Referee.—Only those unpreferred creditors who except to the report of the referee are entitled to participate in funds which by rulings on the exceptions are turned from the preferred creditors.—*People v. American Loan & Trust Co.*, 75 N. Y. Supp. 563.

67. **COSTS**—Fees of Witnesses.—The fees of a witness attending the trial of a case, though not subpoenaed,

held properly taxable against the losing party.—*International & G. N. R. Co. v. Richmond, Tex.*, 67 S. W. Rep. 1025.

68. **COSTS**—Security for Costs.—To entitle defendant to security for costs of non-resident plaintiff after answer, he must show a sufficient excuse for his delay in application.—*Dunaway v. Terry*, 75 N. Y. Supp. 974.

69. **COUNTIES**—Liability for Torts.—Where a county is liable for injury done to adjacent lands in repairing a road, its agents, doing the work under appointment of the fiscal court, were also liable.—*Layman v. Beeler*, Ky., 67 S. W. Rep. 995.

70. **COUNTIES**—Police Jury.—Taxpayers of a parish have a right to implead the police jury and question the constitutionality of any act or ordinance of that body.—*Hudson v. Police Jury of Claiborne Parish, La.*, 31 South. Rep. 888.

71. **COUNTIES**—Publication of Ordinance.—Where a city has failed to show due publication of an ordinance, and it is apparent that competent evidence was obtainable, the case will be remanded on appeal by the other party to enable the city to produce such evidence.—*Pucheu v. Town of Jennings, La.*, 31 South. Rep. 864.

72. **COVENANTS**—Good-faith Purchaser.—Plaintiff in an action for breach of a covenant in *seisin* has the burden of showing that defendant was a bad-faith purchaser on a mortgage foreclosure sale, which would enable the mortgagor to attack the title, notwithstanding Code Civ. Proc. § 445.—*Zarkowski v. Schroeder*, 75 N. Y. Supp. 1021.

73. **CRIMINAL EVIDENCE**—Admission by One Conspirator.—Evidence of an admission of guilt by one of two conspirators jointly indicted is competent against the defendant by whom it was made.—*Richards v. Commonwealth, Ky.*, 67 S. W. Rep. 518.

74. **CRIMINAL EVIDENCE**—Bribery.—On a prosecution of a police officer for accepting a bribe, evidence that several days before the payment of the money the person paying it drew approximately the amount paid from a bank is inadmissible to corroborate the person paying it, without proof tracing the money to the officer's possession.—*People v. Bissert*, 75 N. Y. Supp. 630.

75. **CRIMINAL LAW**—Assault upon Wife.—A wife is competent to swear out a complaint against her husband for assaulting her with intent to kill.—*Goodwin v. State, Wis.*, 90 N. W. Rep. 170.

76. **CRIMINAL LAW**—Instruction.—Where it is claimed that an instruction which states no erroneous proposition of law is not sufficiently explicit, it is counsel's duty to prepare and submit a proper instruction, which must be refused, before error can be predicated on the court's action in giving the instruction complained of.—*Musfelt v. State, Neb.*, 90 N. W. Rep. 237.

77. **CRIMINAL TRIAL**—Bill of Exceptions.—Alleged misconduct of the trial court, set out in affidavits, but not incorporated in the bill of exceptions, cannot be considered on appeal.—*State v. Berger*, Iowa, 90 N. W. Rep. 618.

78. **CRIMINAL TRIAL**—Instructions as to Telling the Truth.—A charge in a criminal case that, "when you have determined who it is that tells the truth, you have determined the guilt or innocence of these parties," was misleading, as witnesses might be entirely truthful, and yet their evidence be insufficient to remove a reasonable doubt.—*People v. Chartoff*, 75 N. Y. Supp. 1098.

79. **CRIMINAL TRIAL**—New Trial.—Where no good reason is assigned for not examining defendant's witnesses as to certain matters, their testimony as to such matters furnishes no ground for a new trial.—*Ware v. State, Tenn.*, 67 S. W. Rep. 853.

80. **CRIMINAL TRIAL**—Opinion of Witness.—A question, asked a witness in a prosecution for assault with intent to kill, as to the possibility of recognizing persons under certain conditions, held proper cross-examination.—*Keyser v. State, Md.*, 51 Atl. Rep. 1057.

81. **CUSTOMS AND USAGES**—Admissibility in Evidence.—Persons dealing with each other in a business in

which certain usages exist are presumed to deal with reference thereto, and it is competent to show what such usages are.—Lupton v. Nichols, Ind., 63 N. E. Rep. 477.

82. CUSTOMS AND USAGES—Evidence.—Where a check, when offered in evidence, contained a recital that it was in full settlement, evidence that checks defendant gave to others recited what they were given for, held inadmissible, in absence of evidence that payee knew of such custom.—Blodgett v. Vogel, Mich., 90 N. W. Rep. 277.

83. DAMAGES—Breach of Contract.—In an action for breach of contract to deliver a note, the amount for which the note was to be given is *prima facie* the measure of damages.—Deering v. Johnson, Minn., 90 N. W. Rep. 363.

84. DAMAGES—Speculation.—Where the only damages for breach of contract by a jobber to introduce and sell a particular cigar was the loss of profits he would have made, but for the breach, evidence to show such profits held not objectionable as speculative.—Hirschhorn v. Bradley, Iowa, 90 N. W. Rep. 392.

85. DEEDS—Consideration.—Conveyance by a father to his son, in consideration of support, held not presumptively fraudulent, so as to place the burden of proving want of undue influence on the grantee.—Chidester v. Turnbull, Iowa, 90 N. W. Rep. 583.

86. DEEDS—Delivery.—A question whether a grantor of land, in leaving with his attorney a deed thereof to plaintiff's predecessor in title, intended to deliver the deed to such grantee, was one of fact for the jury.—Fitzpatrick v. Brigman, Ala., 31 South. Rep. 940.

87. DESCENT AND DISTRIBUTION—Collation by Heir.—An heir cannot be compelled to collate an amount expended to send him to school, though he failed to avail himself of the opportunity offered to go to school.—King v. King, La., 31 South. Rep. 894.

88. DESCENT AND DISTRIBUTION—Debt to Succession.—Where an heir admits an indebtedness to the succession growing out of a joint venture, he will be charged therewith.—King v. King, La., 31 South. Rep. 894.

89. DIVORCE—Alimony.—A wife's judgment for alimony, rendered in her action for divorce, is a lien on the family homestead, title to which is in the husband.—Frauman v. Frauman, Neb., 90 N. W. Rep. 245.

90. DIVORCE—Alimony.—An allowance of \$1,500 alimony to a husband on a divorce being granted to his wife held excessive, and reduced to \$750.—McDonald v. McDonald, Iowa, 90 N. W. Rep. 368.

91. DIVORCE—Good-faith of Plaintiff.—Wife, having brought suit for divorce in bad faith to compel a conveyance by her husband to her, held not entitled to alimony *pendente lite*, nor to counsel fees.—Bradford v. Bradford, Miss., 31 South. Rep. 963.

92. DIVORCE—Setting Aside.—Where defendant, seeking to have a default judgment in divorce set aside for defect in affidavit of publication, does not ask to answer, the question is whether the affidavit was sufficient to call for judicial action.—Peterson v. Peterson, S. Dak., 90 N. W. Rep. 136.

93. EASEMENTS—Prescription.—An easement in lands can be required by prescription only by an uninterrupted adverse user for the length of time necessary to defeat the title of the true owner of the land by adverse possession.—Schulenberg v. Zimmerman, Minn., 90 N. W. Rep. 136.

94. EASEMENTS—Right of Way.—A will devising a right of way to one devisee over the lands of another held to carry an easement only, and not the fee to the way.—Truax v. Gregory, Ill., 63 N. E. Rep. 674.

95. EJECTMENT—Possession.—In ejectment for a strip along a boundary line, plaintiff, having failed to show paper title, could not recover on the strength of his possession, as ejectment can be maintained only by one out of possession.—Peters v. Reichenbach, Wis., 90 N. W. Rep. 184.

96. ELECTIONS—Ballots.—Under Election Law 1891, § 23, a voter cannot vote for a candidate by sticking a

paste with his name on the ballot, instead of writing his name thereon and placing a cross opposite it.—McSorley v. Schroeder, Ill., 63 N. E. Rep. 697.

97. ELECTIONS—Designation of Parties.—Under Gen. Laws, 1901, ch. 312, where a name was adopted as a party designation and used for several years, and the party had a candidate for mayor whose name is now on the official ballot, the candidate of another subsequently formed party cannot use the name for designation.—Brown v. Jensen, Minn., 90 N. W. Rep. 155.

98. EMINENT DOMAIN—Offer to Make Compensation.—The owners of land at the time it is taken by a railroad company being entitled to compensation, though they afterwards sell to others, bill by the railroad to prevent interference should offer to make compensation to them.—Hood v. Southern Ry. Co., Ala., 31 South. Rep. 387.

99. EQUITY—Amendment.—Where defendants consented to an amendment, and failed to demur to the original bill on account of its omission therefrom, they thereby waived the defect, if any, created by the omission.—Hank v. Van Ingen, Ill., 63 N. E. Rep. 705.

100. EQUITY—Findings by Jury.—Under Gen. Laws, ch. 243, § 8, a party in a suit in equity is not entitled to a decree on a verdict as a matter of course, but the verdict stands merely as an advisory finding.—Law v. Miller, R. I., 51 Atl. Rep. 1051.

101. ESTOPPEL—Beneficiaries.—Beneficiary, having received property by will, held precluded from attacking the title of another beneficiary to property given by the will.—Norris v. Downing, Ill., 63 N. E. Rep. 627.

102. ESTOPPEL—Clothing Debtor with Apparent Ownership.—Making a lease as "authorized agent" for her husband, by a married woman in whose name the record title has stood for eight years, is not such a representation as to ownership as will estop her from claiming title against the notary acknowledging the lease, who two years afterwards loans money to the husband, supposing him to own the lands.—Laing v. Evans, Neb., 90 N. W. Rep. 246.

103. EVIDENCE—Attorney and Client.—In an action against an estate for services as attorney, triers of facts are not bound by the testimony of experts as to the value of such services.—Kingsbury v. Joseph, Mo., 68 S. W. Rep. 93.

104. EVIDENCE—Bill to Construe a Deed.—Bill to construe a deed and to declare that the remainder-man, a child of the life tenant, is entitled to the estate in fee, alleging that the life tenant is past the time of life to have children, held insufficient.—Hill v. Spencer, Ill., 63 N. E. Rep. 614.

105. EVIDENCE—Defective Sidewalks.—In an action against a municipal corporation for injuries from a defective sidewalk, statements by an ex-councilman as to what knowledge he had of the defect while a member of the council were not admissible.—Adkins v. City of Monmouth, Oreg., 68 Pac. Rep. 737.

106. EVIDENCE—Depositions.—Deposition held not admissible in suit other than the one in which it was taken.—Bates v. Bates, Mo., 67 S. W. Rep. 992.

107. EVIDENCE—Duties of Foreman.—The testimony of a witness that he knew what the duties of a master's foreman were, followed by a statement of them, is not incompetent, as being the conclusion of the witness.—Western Stone Co. v. Musical, Ill., 63 N. E. Rep. 664.

108. EVIDENCE—Fell from Hand Car.—A section man of four months' standing competent to testify as to the speed of a hand car on which he was riding.—Haworth v. Kansas City S. Ry. Co., 68 S. W. Rep. 111.

109. EVIDENCE—Fraudulent Conveyance.—Where before an alleged fraudulent conveyance of goods was made, defendant had attempted to sell the goods to another person, testimony of such person as to statements by defendant of his reasons for the sale held admissible.—Gage v. Trawick, Mo., 68 S. W. Rep. 85.

110. EVIDENCE—Judgment of Sister States.—The act of congress providing a method of authenticating the

judgments of sister states is not exclusive, and a copy certified as provided in Hurd's Rev. St. ch. 51, § 13, "under the hand of the clerk of the court having custody" of the original, is competent proof of such judgment.—*People v. Miller*, Ill., 63 N. E. Rep. 504.

111. EVIDENCE—Judicial Notice.—The court will take judicial notice that a letter mailed in New York City at 6:50 p. m. on May 29 will be delivered in the due course of mails on the morning of May 30th.—*Morel v. Stearns*, 75 N. Y. Supp. 182.

112. EVIDENCE—Original Entries.—In a suit by depositors of wheat in a warehouse to compel an accounting by a transferee of the wheat, the warehouseman's receipt book containing the stubs held admissible as book of original entry.—*Tobin v. Portland Flouring Mills Co.*, Oreg., 68 Pac. Rep. 743.

113. EVIDENCE—Photographs.—In an action for death caused by the bursting of a distillery slop vat, photographs of the bursted vat hoops, taken after the accident, held not sufficiently identified to be admissible.—*Hupfer v. National Distilling Co.*, Wis., 90 N. W. Rep. 191.

114. EVIDENCE—Withdrawing Pleading.—Defendant having in the justice court admitted all plaintiff's allegations as to certain credits, cannot withdraw his answer and put plaintiff to proof, after plaintiff, on the appeal to the circuit court, has taken a nonsuit as to other matters.—*Mahan v. Brinnell*, Mo., 67 S. W. Rep. 930.

115. EXCEPTIONS, BILL OF—Judicial Notice.—A bill of exceptions may properly include a record of events which took place in presence of the court and matters of which it took judicial notice.—*State v. Fawcett*, Neb., 90 N. W. Rep. 250.

116. EXCEPTIONS, BILL OF—Mandamus.—Where the court improperly refuses to permit a party to file a bill of exceptions, his remedy is by *mandamus*, and not by appeal or writ of error.—*Hartford Life & Annuity Ins. Co. v. Roesiter*, Ill., 63 N. E. Rep. 680.

117. EXCEPTIONS, BILL OF—Time of Filing.—Where a bill of exceptions appeared to have been filed in proper time, it will not be stricken, though there are affidavits showing that it was not in fact filed until long after adjournment of court.—*Keller v. Kettner*, Tex., 67 S. W. Rep. 907.

118. EXCHANGES—Unlawful Transactions.—In a suit to enjoin a board of trade from refusing market quotations, evidence by complainant that a large part of the transactions between members of the board of trade was speculative, and not different from that done by complainant, is irrelevant.—*Central Stock & Grain Exchange v. Board of Trade of Chicago*, Ill., 63 N. E. Rep. 740.

119. EXECUTION—Items of Costs.—Execution out of circuit court, in case appealed from justice, held not vitiated by reason of the fact that among the items of costs indorsed thereon the justice's fees were stated in gross, and not itemized, as required by Code, § 1893.—*Griffin v. Dauphin*, Ala., 31 South. Rep. 849.

120. EXECUTION—Lien for Debt.—The purchaser of a lien upon property upon which an execution has been levied as *pro tanto* a purchaser of the property, and therefore within the protection of the statute, where no memorandum has been filed and he has purchased without notice thereof.—*Ponder v. Boaz*, Ky., 67 S. W. Rep. 893.

121. EXECUTION—Motion to Quash.—Where an appellee, on appeal from a justice, moves to dismiss, and the motion is sustained, but thereafter a judgment of affirmance is entered, it is no ground to quash an execution issued.—*Hathaway v. St. Louis, K. & S. R. Co.*, Mo., 68 S. W. Rep. 109.

122. EXECUTION—Purchase by Co-Surety.—A co-surety on a bond held not prevented from purchasing the property of the other surety at an execution sale to satisfy the forfeited bond.—*Bacon v. Early*, Iowa, 90 N. W. Rep. 353.

123. EXECUTION—Right to Issue Execution.—Comp. Laws, § 5803, relating to the issuance of an execution after the death of a judgment debtor, held to have been adopted from California, and presumably with the construction given it in that state.—*Yankton Sav. Bank v. Gutterson*, S. Dak., 90 N. W. Rep. 144.

124. EXECUTORS AND ADMINISTRATORS—Ancillary Administration.—Illinois creditors of a deceased Illinois insolvent, who have presented their claims in ancillary administration in Missouri, cannot, on the ground of diligence, claim greater rights therein than other creditors.—*Ramsey v. Ramsey*, Ill., 63 N. E. Rep. 618.

125. EXECUTORS AND ADMINISTRATORS—Commissions.—Where administratrix of infant includes money coming into her hands, representing an infant's share in real estate, but remaining real estate, in her account, it will be stricken out, and no commissions thereon allowed.—*In re McKay*, 75 N. Y. Supp. 1069.

126. EXECUTORS AND ADMINISTRATORS—Compensation of Parent for Child's Board.—Where a father was working for about \$50 per month, he was entitled to compensation for the board of his infant daughters, whose income was ample to meet their ordinary wants.—*Hedges v. Hedges*, Ky., 67 S. W. Rep. 835.

127. EXECUTORS AND ADMINISTRATORS—Contingent Debt.—The holder of a contingent debt against a decedent's estate is not a creditor thereof, within Code, Civ. Proc. § 2745.—*In re Henshaw*, 75 N. Y. Supp. 1047.

128. EXECUTORS AND ADMINISTRATORS—Corpus of Estate.—An order authorizing a guardian to expend for the education and maintenance of his wards so much of the corpus of the estate "as may be necessary" for such purpose held void, under Rev. St. art. 2549.—*Wheeler v. Duke*, Tex., 67 S. W. Rep. 909.

129. EXECUTORS AND ADMINISTRATORS—Creditors.—Under Rev. St. 1898, §§ 3807, 3808, an attorney who has performed services for an administrator, who has been discharged without paying therefor, is not a creditor of the estate, who is entitled to apply for administration *de bonis non*.—*In re McKune's Will*, Wis., 90 N. W. Rep. 162.

130. EXECUTORS AND ADMINISTRATORS—Debts of Decedent.—Judgment for costs against administratrix in action by her on debt due decedent held entitled to preference over debts due general creditors.—*In re Mahoney's Estate*, 75 N. Y. Supp. 1056.

131. EXECUTORS AND ADMINISTRATORS—De Bonis Non.—The personal representative of an executor who died in office before the account was had in reference to his trust held not liable, under Rev. St. § 6020, to the administrator *de bonis non* of the testator, in an action against him alone as such personal representative to recover the unadministered assets of the estate of such testator.—*Jones v. Willis*, Ohio, 63 N. E. Rep. 605.

132. EXECUTORS AND ADMINISTRATORS—Disposition of Property After Life Estate.—Where a husband devises property to his wife for life, and directs the disposition of the portion remaining at her death, the portion so remaining is not subject to the control of her administrator.—*Jester v. Gustin*, Ind., 63 N. E. Rep. 471.

133. EXECUTORS AND ADMINISTRATORS—Legal Expenses.—An administrator, on sale of realty, held not entitled to be paid out of the fund legal expenses he has contracted.—*In re Summers' Estate*, 75 N. Y. Supp. 1050.

134. EXECUTORS AND ADMINISTRATORS—Power of Appraisers.—Under Code Civ. Proc. § 491b, appraisers appointed to fix the value of the judgment debtor's interest in the land, for the purpose of execution sale, have no power to deduct, or apportion according to area, liens upon an entire tract, for the purpose of determining the judgment debtor's interest in a distinct parcel of the entire tract.—*Fraaman v. Fraaman*, Neb., 90 N. W. Rep. 245.

135. EXECUTORS AND ADMINISTRATORS—Proceeding by Creditors.—Where creditors of an intestate unsuccessfully claim that funds in hands of public adminis-

trator are assets of the estate, and not the property of minor heirs, they are taxable with the costs. — *Elstroth v. Young*, Mo., 68 S. W. Rep. 100.

136. **EXEMPTIONS—Nature of Action.**—A judgment for costs against the plaintiff in an action for cutting trees on the land of another, under Code, § 4137, is not subject to any exemption in plaintiff's favor. — *Crawford v. Slaton*, Ala., 31 South. Rep. 940.

137. **FIRE INSURANCE—Authority of Agent.**—An agent representing a number of insurance companies may be authorized by an owner desiring to keep his property insured to accept for him notice of cancellation of an existing policy and thereupon to write the risk in another company. — *Johnson v. North British & Mercantile Ins. Co.*, Ohio, 63 N. E. Rep. 610.

138. **FIRE INSURANCE—Right to Sue.** — Lesser held entitled to sue on fire policy taken out in her name by the lessee's agent on personal property belonging to her and situated on the leased premises. — *Watson v. Southern Ins. Co.*, Miss., 31 South. Rep. 904.

139. **FRAUDS, STATUTE OF—Action Against Surety on Note.**—A verbal contract for more than a year with a harvesting machine company to serve as sales agent held to be within the statute of frauds, and hence to prevent the recoupment of damages for the company's breach thereof, in an action against a surety on a note made by the agent for stock purchased. — *Peck v. McCormick Harvesting Mach. Co.*, Ill., 63 N. E. Rep. 731.

140. **FRAUDS, STATUTE OF—Partial Performance.** — Performance by a daughter of her part of an oral contract with a parent requiring the latter to convey land held to take the contract out of the operation of the statute of frauds. — *Horne v. McConnell*, Ind., 63 N. E. Rep. 472.

141. **FRAUDS, STATUTE OF—Specific Performance.** — Where the complaint in a suit for the specific performance of a contract to convey land does not state whether the contract is in writing or oral, it will be presumed to be oral. — *Horne v. McConnell*, Ind., 63 N. E. Rep. 472.

142. **FRAUDULENT CONVEYANCES—Chattel Mortgage.** — Where a creditor takes possession of merchandise, claiming an agreement with the debtor by which the latter turned over the goods as a pledge to secure the debt, and there is evidence that the creditor took possession by virtue of a chattel mortgage, the character of his possession is for the jury. — *E. A. Godfrey & Sons Co. v. Citizens' Nat. Bank*, Neb., 90 N. W. Rep. 239.

143. **GUARANTY—Principal and Agent.** — Guarantor for agent held liable for shortage in bank account, carried in the name of the agent, but representing funds of the principal. — *Slothower v. McFarlin Grain Co.*, Iowa, 90 N. W. Rep. 620.

144. **GUARDIAN AND WARD—Final Accounting.** — Where property was assigned to a guardian, subject to the dower rights of the mother, and the guardian was ordered to pay her a fixed sum annually, on final accounting, he cannot object to an order to pay over the balance to his ward on the ground that no allowance for the dower interest of the mother therein was made. — *Hendri v. Sabin*, Minn., 90 N. W. Rep. 159.

145. **GUARDIAN AND WARD—Judgment.** — A judgment in the settlement of a guardian's account, charging him with a balance due his ward, held conclusive in an action against the sureties on the bond. — *Chase v. Wright*, Iowa, 90 N. W. Rep. 357.

146. **HOMESTEAD—Acknowledgments.** — A mortgage executed on a homestead is absolutely void, unless acknowledged by both husband and wife. — *Hedblom v. Pierson*, Neb., 90 N. W. Rep. 218.

147. **HOMESTEAD—Conveyance.** — Code, §§ 1972, 1973, 1976, considered, and held that, where one makes a declaration of a homestead covering land worth more than \$3,000, he may, notwithstanding such declaration, convey a part thereof without the wife joining, so long as land of the value of a statutory homestead is left. — *Nixon v. Hewes*, Miss., 31 South. Rep. 829.

148. **HOMESTEAD—Oral Agreement to Convey.** — An oral agreement to convey a homestead did not

cause the abandonment of the homestead, though the other parties to the agreement took possession thereunder. — *Buettgenbach v. Gerbig*, Neb., 90 N. W. Rep. 654.

149. **HOMICIDE—Evidence.** — On prosecution for murder, held permissible for the state, on cross-examining defendant, to ask why he had gone to his friend's house while the difficulty was in progress, and on his replying, "to obtain a pistol," to further ask what he wanted of it. — *Hurst v. State*, Ala., 31 South. Rep. 933.

150. **HOMICIDE—Instruction.** — A definition of murder in the second degree as the unlawful and malicious killing of a human being held not error, in connection with the balance of the instruction, distinguishing the two degrees of murder. — *Johnson v. State*, Ala., 31 South. Rep. 951.

151. **HOMICIDE—Self-Defense.** — The burden of sustaining a plea of self-defense is on the defendant. — *Stewart v. State*, Ala., 31 South. Rep. 944.

152. **HUSBAND AND WIFE—Community Property.** — All property standing in the name of the husband or the wife, or in their joint names, is presumed to be community property. — *Succession of Manning*, La., 31 South. Rep. 862.

153. **HUSBAND AND WIFE—Conflict of Laws.** — Defense of coverture in action on a note given by married woman in liquidation of liability under a bond on which she was surety held governed by laws of the state where the contract of suretyship was made. — *Robison v. Pease*, Ind., 63 N. E. Rep. 479.

154. **HUSBAND AND WIFE—Subrogation.** — Where the wife was the owner of a separate interest in property owned by her husband, she being his creditor, she had a right to pay a debt against him and to legal subrogation, if it did not come in conflict with the transferor's mortgage, who retained all his rights on unpaid notes in his hands. — *Walmsley v. Theus*, La., 31 South. Rep. 889.

155. **HUSBAND AND WIFE—Widow's Statutory Rights.** — A married man's gift of personal property before his death cannot be avoided by his widow, in the absence of fraudulent intent on his part to deprive her of her statutory rights. — *In re Young's Estate*, Pa., 51 Atl. Rep. 1036.

156. **HUSBAND AND WIFE—Wife's Separate Estate.** — Where a judgment creditor's debt was not in existence when reality was conveyed to the debtor's wife, the creditor must show payment of the consideration by the debtor to subject to his debt the price on a conveyance of such realty. — *Jones v. Nolan*, Ala., 31 South. Rep. 945.

157. **INJUNCTION—Swamp Lands.** — Where plaintiff is the owner of certain swamp lands, with exclusive right to hunt thereon, other persons will be enjoined from shooting on or over such lands, or any of the waters thereof. — *Lamprey v. Danz*, Minn., 90 N. W. Rep. 578.

158. **INSANE PERSONS—Action by Guardian.** — Where an action is carried on by a guardian, it is not error to allow evidence of his appointment and of a finding that plaintiff is insane, to account for the latter's absence at the trial. — *Buck v. Hogeboom*, Neb., 90 N. W. Rep. 635.

159. **INSURANCE—Construction of Policy.** — Accident insurance policy construed, and held, that the fact that a leg was not amputated until more than three months after the accident did not bar recovery for the loss. — *Marshall v. Commercial Travelers' Mut. Acc. Assn. of America*, N. Y., 63 N. E. Rep. 446.

160. **INSURANCE—Designation of Beneficiary.** — Payment of insurance, under an article in the policy permitting payment to any one who had incurred expense on account of insured, operated as a complete discharge of the company. — *Thomas v. Prudential Ins. Co. of America*, Ind., 63 N. E. Rep. 735.

161. **INTOXICATING LIQUORS—License.** — An indictment for selling beer in a village after it has been voted against the issuance of a license is not defective for failing to allege that the beer sold was to be consumed

within the village. — *State v. Johnson*, Minn., 90 N. W. Rep. 161.

162. **INTOXICATING LIQUORS**—Sale by Druggist.—Where an action is brought on a liquor dealer's bond alone, on which no recovery can be had, a recovery can be had therein against the dealer individually. — *Carter v. Nicol*, Iowa, 90 N. W. Rep. 352.

163. **JUDGES**—Entry Nunc Pro Tunc. — Judge in office held empowered to adopt findings of predecessor in office seven years before, as certified to by the then court reporter, and to enter judgment thereon. — *Edmonds v. Riley*, S. Dak., 90 N. W. Rep. 139.

164. **JUDGMENT**—Disbarment of Attorney. — Where, on an application to disbar an attorney admitted from another state on the ground of want of good moral character, the relators introduced a judgment of such state disbarring him there, a duly certified copy of a judgment reopening and setting aside such first judgment is admissible, though not pleaded, and annuls the effect of such first judgment. — *People v. Miller*, Ill., 63 N. E. Rep. 504.

165. **JUDGMENT**—Modification. — Under Code, §§ 243, 244, the court may modify a judgment solely upon knowledge gained by it during the trial, and upon facts shown by the pleadings and other records in the case. — *McConnell v. Avery*, Iowa, 90 N. W. Rep. 604.

166. **JUDGMENT—QUO WARRANTO** — In *quo warranto* to test the legality of the organization of a drainage district, a former judgment on *certiorari* proceedings held not pleadable in bar. — *People v. Gary*, Ill., 63 N. E. Rep. 749.

167. **JUDGMENT**—Reformation of Judgment.— Equity has no jurisdiction to reform a judgment in ejectment consistent with the pleadings for a mistake in such pleadings. — *Mayer v. Calera Land Co.*, Ala., 31 South. Rep. 938.

168. **JUDGMENT**—*Res Judicata*.—A judgment in an action to quiet title to real estate held not *res judicata* as to certain tenants in possession, in an action against them for use and occupation subsequent to the original suit. — *Lindt v. Linder*, Iowa, N. W. Rep. 306.

169. **JUDGMENT**—Rights of Remaindermen. — A decree in partition, adjudging that life devisees are the owners of the devised premises in fee, and setting off the same in severalty to the life devisees, held not to conclude the remaindermen from claiming title as against the purchasers from the life devisees. — *Peterson v. Jackson*, Ill., 63 N. E. Rep. 643.

170. **JURISDICTION**—Amendment of Pleadings.—Where, after objection to a retrial on the ground that the justice had no jurisdiction, plaintiff amended its complaint, held not a waiver of previous objection nor to restore jurisdiction. — *May v. Grawert*, Minn., 90 N. W. Rep. 383.

171. **JURISDICTION**—Waiver of Objection. — That contestee, after his objection to the jurisdiction of the contest board had been overruled, made defense, and upon appeal by the contestant again made defense, after his objection to the jurisdiction of the court had been overruled, was not a waiver of his objection. — *Davidson v. Johnson*, Ky., 67 S. W. Rep. 966.

172. **JUSTICES OF THE PEACE**—Appeal.— Common carrier held not a public officer, entitled to appeal from a judgment of a justice, where the amount in controversy was less than \$20, under Rev. St. § 1298, subd. 3. — *Lyons v. Rutland R. Co.*, Vt., 51 Atl. Rep. 1039.

173. **LANDLORD AND TENANT**—Burden of Proof.—Where the lessor of oil lease sues an assignee of the lessee on a covenant, the burden is on the lessor to prove the assignment. — *Heller v. Dailey, Ind.*, 63 N. E. Rep. 490.

174. **LANDLORD AND TENANT**—Replevin. — The giving of a peremptory instruction for defendant, in replevin for distrained property, granted on the theory that a contract drawn, but not signed, fixed the rent of premises, held erroneous. — *Sutton v. Graham*, Miss., 31 South., Rep. 909.

175. **LIBEL**—Definition.—For a written article to be defamatory, it must tend to produce public hatred, contempt, or ridicule, or to take away the benefits of public confidence or social intercourse. — *Quinn v. Prudential Ins. Co.*, Iowa, 90 N. W. Rep. 349.

176. **LICENSES**—Revocation.—The entry on the land of another, and the expenditure of large sums of money in constructing a ditch, by a person having a mere personal license, will not estop the landowner or his successor from revoking the license, though the former knew when he granted the license that the licensee would make the improvements. — *Hicks v. Swift Creek Mill Co.*, Ala., 31 South. Rep. 947.

177. **LIFE INSURANCE**—False Statements in Application.—In an action on a life policy, the falsity of statements in the insurance application need not be specially pleaded, but may be shown under the general issue. — *Leonard v. State Mut. Life Assur. Co.*, K. L., 51 Atl. Rep. 1049.

178. **LIS PENDENS**—Execution Sale.—Where an execution sale took place after the filing of the petition in an action to quiet title, a purchaser at such sale is chargeable with notice of the claim to the property stated in such petition. — *Bacon v. Early*, Iowa, 90 N. W. Rep. 353.

179. **MANDAMUS**—Depositions.—Where a judge refuses to order a commission to issue to take testimony, there is a remedy by appeal, and *mandamus* directing the issuance of the commission will not be granted. — *State v. Judge of Civil District Court for Parish of Orleans*, La., 31 South. Rep. 867.

180. **MANDAMUS**—Remedy at Law.—A party who complains that a trial judge has incorporated improper matter in a bill of exceptions has an adequate remedy at law, within Code Civ. Proc. § 646, so that *mandamus* to correct the record will not be granted. — *State v. Fawcett*, Neb., 90 N. W. Rep. 250.

181. **MANSLAUGHTER**—Instructions. — An instruction that where a man finds his wife in adultery and, provoked by the wrong, instantly kills the other party, the homicide is only manslaughter, held properly refused. — *State v. Senegal*, La., 31 South. Rep. 867.

182. **MASTER AND SERVANT**—Dangerous Machinery.—An instruction, in an action for injuries in a sawmill, that dangerous wheels by which plaintiff was injured should have been, as far as practicable, properly guarded or otherwise protected, is proper, under Gen. St. 1894, § 2248. — *Walker v. Grand Forks Lumber Co.*, Minn., 90 N. W. Rep. 573.

183. **MASTER AND SERVANT**—Deaf Mute.—A foreman engaged in clearing trees from a railroad right of way was not required to warn one of the employees who was a deaf mute, but whose sight was unimpaired, of the danger incident to the felling of the trees. — *Melton v. E. E. Jackson Lumber Co.*, Ala., 31 South. Rep. 846.

184. **MASTER AND SERVANT**—Inexperienced Servants.—That the boss of a pulp mill, when he saw a servant using a stick to clean the machine, directed him to use water instead, and told him it was dangerous to use a roller stick, did not lessen the force of the circumstance as notice to the company of the necessity for instruction and caution to other employees. — *Lapelle v. International Paper Co.*, N. H., 51 Atl. Rep. 1068.

185. **MASTER AND SERVANT**—Negligence. — Where one was perfectly familiar with certain machinery, and his injury was caused by his own carelessness, the master was not liable. — *Merchant v. Pine Woods Lumber Co.*, La., 31 South. Rep. 878.

186. **MONOPOLIES**—Garnishment.—While a combination to regulate prices may be illegal, the money arising therefrom in the hands of a third person for one of the members thereof is honest money, subject to garnishment process in favor of a creditor of such member. — *Geurinck v. Alcott*, Ohio, 63 N. E. Rep. 714.

187. **MORTGAGES**—Amendment of Foreclosure Decree.—An amendment of a foreclosure decree, made at a term of court subsequent to the term at which the decree was entered, and without notice to a defendant, who was in default, is of no validity as to such defendant. — *Browne v. Kiel*, Iowa, 90 N. W. Rep. 624.

188. MORTGAGES—Appraisement.—In the absence of fraud, an appraisement on foreclosure cannot be successfully attacked solely on the ground that the property was appraised too low.—Hubbard v. Hennessey, Neb., 90 N. W. Rep. 220.

189. MORTGAGES—Foreclosure.—The negligence of a purchaser at a foreclosure sale of land in regard to the assertion of his title held to support a contention by the landowner that he was not served with notice of the foreclosure proceedings.—Shehan v. Stuart, Iowa, 90 N. W. Rep. 614.

190. MORTGAGES—Foreclosure.—Where indorsee of mortgage notes begins foreclosure without making the indorser a party, and pending suit transfers the notes as collateral, and secures dismissal of an intervention by the first indorser setting up the latter's insolvency, he cannot complain that the holder of the collateral did not commence proceedings against his indorser.—Stoddart v. American Nat. Bank, Neb., 90 N. W. Rep. 213.

191. MORTGAGES—Publication of Notice of Sale.—Publication of notice of sale on foreclosure in each issue of a semi-weekly paper for 30 days is a sufficient compliance with the statute.—Omaha Loan & Trust Co. v. Lynch, Neb., 90 N. W. Rep. 217.

192. MORTGAGES—Sale by Junior Creditor.—The owner of property has an interest that his property be sold by the seizing creditor for an amount sufficient to pay mortgages in rank superior to the mortgages of the seizing creditor, and a sale for less than the amount of the mortgage first in rank is void.—Walmsley v. Theus, La., 31 South. Rep. 869.

193. MORTGAGES—Satisfaction.—A satisfaction entered on the record by a mortgagee, after sale and delivery of the notes secured by mortgage to a third party, will protect a subsequent mortgagee or bona fide purchaser.—Columbia Nat. Bank v. Marshall, Neb., 90 N. W. Rep. 218.

194. MORTGAGES—Shutting off Second Mortgage.—A second mortgagee held entitled to relief against foreclosure and sale under first mortgage, because of collusion and unfair dealings, for the purpose of shutting off his mortgage.—Nichols v. Flagg, R. I., 51 Atl. Rep. 1099.

195. MORTGAGES—Subrogation.—A third possessor, who pays off a special mortgage, becomes thereby subrogated to the rights of the mortgagee, who has been paid; and the right is not lost because the third possessor may be subsequently evicted.—Walmsley v. Theus, La., 31 South. Rep. 869.

196. MORTGAGES—Usury.—Where a debt secured by a mortgage is tainted with usury, the mortgagee is precluded from being a bona fide purchaser without notice of equities in third parties.—Clark v. Johnson, Ala., 31 South. Rep. 960.

197. MUNICIPAL CORPORATIONS—Action on Contract.—In an action against a city on a contract, the city having had general authority to make the contract, it is not incumbent on plaintiff to show the taking of the steps and existence of conditions requisite to authorize the city to make the contract, such as the making of an appropriation, the letting to the lowest bidder after advertisement, etc.—City of Chicago v. Peck, Ill., 63 N. E. Rep. 711.

198. MUNICIPAL CORPORATIONS—Defective Streets.—A complaint in an action against a city for injuries owing to a defect in a street held insufficient for not alleging the defect caused by act of omission or commission on part of defendant.—City of Indianapolis v. Crans, Ind., 63 N. E. Rep. 478.

199. MUNICIPAL CORPORATIONS—Exemption from Taxation.—A contract by a city to relieve a water company from all city and school taxes, in consideration of water to be furnished the city, includes road taxes.—Alpena City Water Co. v. City of Alpena, Mich., 90 N. W. Rep. 336.

200. MUNICIPAL CORPORATIONS—Improvements.—On collateral attack, it will be conclusively presumed, in

favor of the validity of a street assessment, that the damages were deducted in estimating the benefits.—Gaslight & Coke Co. v. City of New Albany, Ind., 63 N. E. Rep. 458.

201. MUNICIPAL CORPORATIONS—Injury on Highway.—The fact that a road through a public park is a highway must be shown in an action against the city for injuries received therein; the city being liable if the road is a highway, under Gen. Laws, ch. 36, §§ 15-17, and *Id.* ch. 72, § 12.—Blair v. Granger, R. I., 51 Atl. Rep. 1042.

202. MUNICIPAL CORPORATIONS—Maintenance of Sewers.—An ordinance exempting a city from damages resulting from a sewer connection cannot be invoked by the city to protect it from damages occasioned by its negligence in permitting a sewer to remain in a defective condition.—Murphy v. City of Indianapolis, Ind., 63 N. E. Rep. 469.

203. MUNICIPAL CORPORATIONS—Negligence.—Municipal corporations act ministerially in the construction and maintenance of sewers, and their negligence in respect thereto may be the basis of an action.—Murphy v. City of Indianapolis, Ind., 63 N. E. Rep. 469.

204. MUNICIPAL CORPORATIONS—Power to Grant Franchises.—Rev. St. 1898, § 1862, authorizes municipal corporations to grant street railway franchises only to corporations and to private parties already holding franchises granted under earlier laws.—Allen v. Clausen, Wis., 90 N. W. Rep. 181.

205. MUNICIPAL CORPORATIONS—Street Railway Franchise.—Equity held to have power at suit of private party to enjoin operation of street railway under pretended license from municipality which the latter had no power to grant.—Allen v. Clausen, Wis., 90 N. W. Rep. 181.

206. MUNICIPAL CORPORATIONS—Waterworks Company.—A city has power to enter into a contract relieving a waterworks company from future city and school taxes, in consideration of water to be furnished free of charge for public purposes.—Alpena City Water Co. v. City of Alpena, Mich., 90 N. W. Rep. 323.

207. NEGLIGENCE—Distillery Slop Vat.—In an action for death caused by bursting of a distillery slop vat, evidence consisting chiefly of photographs of the bursted hoops held sufficient to sustain a finding that derandant could have discovered the defective condition of the tank by exercise of ordinary care.—Hupfer v. National Distilling Co., Wis., 90 N. W. Rep. 181.

208. NEGLIGENCE—Evidence for Jury.—Where, in an action for personal injury, there is evidence in the case which, if believed by the jury, fairly tends to support plaintiff's right to recover, the court does not err in refusing to take the case from the jury.—Wolf v. Collins, Ill., 63 N. E. Rep. 638.

209. NEGLIGENCE—Railroad Torpedo.—Where plaintiff, a child of nine years, was injured by exploding a railroad torpedo of a kind used by defendant, found by defendant's railroad track at a point which people were permitted to pass over, but there was no other evidence, a nonsuit was proper.—Hughes v. Boston & M. E. R., N. H., 51 Atl. Rep. 1070.

210. NUISANCE—Public and Private.—The erection of a dam across a stream constitutes not a mere public nuisance, but is a private nuisance as to a particular party, whose health and the health of whose family is endangered by the malaria produced therefrom, and he is entitled to proceed himself to have it abated.—Richards v. Daugherty, Ala., 31 South. Rep. 984.

211. OFFICERS—Constitutional Law.—The office of city assessor is one held "under the authority of the state," and is within the prohibition expressed in Const. § 236 forbidding a person to hold such office while holding an office of honor or profit under the United States.—State v. Kelly, Miss., 31 South. Rep. 901.

212. OFFICERS—Money Received.—Where a statute imposes the duty on a public officer to pay over moneys received by him in his official capacity, the obligation is an absolute one, unless it is limited by the statute or

by the conditions of his official bond. — *Northern Pac. Ry. Co. v. Owen*, Minn., 90 N. W. Rep. 371.

213. OFFICERS — School Treasurer's Bond. — Under Burns' Rev. St. 1901, §§ 5915, 5975, 5976, relating to school treasurer's official bond, a school treasurer's sureties held liable for money given him by the city trustees for erecting a school building. — *Hogue v. State*, Ind., 63 N. E. Rep. 799.

214. PARTNERSHIP—Corporation. — A corporation cannot be a member of a firm. — *Geurinek v. Alcott*, Ohio, 63 N. E. Rep. 714.

215. PARTNERSHIP—Suit for Accounting. — No demand is necessary as a condition precedent to a suit between partners for an accounting and settlement. — *Hanna v. McLaughlin*, Ind., 63 N. E. Rep. 475.

216. PAYMENT—Mistake — Money paid by a mortgagee of a crop of cotton in a mortgage to secure a debt greater than the value of the crop for the purchase of such cotton from a subsequent mortgagee held recoverable. — *Merrill v. Brantley*, Ala., 31 South. Rep. 847.

217. PAYMENT — Right to Have it Applied to Certain Debt. — Debtor has a right in paying money or transferring property to a creditor in satisfaction of his debts, where several distinct debts are due, to direct to which indebtedness such payment or transfer of property shall operate as a credit. — *Murray v. Schneider*, Neb., 90 N. W. Rep. 206.

218. PAYMENT—Vendor's Lien. — Acceptance by a vendor of a note for purchase money held to raise no presumption of payment or waiver of the vendor's lien. — *Scott v. Edgar*, Ind., 63 N. E. Rep. 452.

219. PLEADING—Admission of Evidence. — Where an objection to a complaint as not stating a cause of action is overruled, and all the evidence introduced by plaintiff is objected to, and the action is dismissed, the complaint stands as if the original objection had been sustained, and judgment had been entered for defendant, and an appeal taken by plaintiff. — *Rogers v. City of St. Paul*, Minn., 90 N. W. Rep. 155.

220. PLEADING — Amendment. — Refusal of leave to amend a petition to conform to the facts proved is properly denied where the court finds the facts sought to be pleaded were not proved. — *Dufrene v. Anderson*, Neb., 90 N. W. Rep. 221.

221. PRINCIPAL AND AGENT—Signature of Securities. — Though it is not necessary that the signature of a surety to a bond be in its proper place at the foot thereof in order to bind him, not every misplaced signature will bind, but the question is for the jury as to his intention. — *Polacheck v. Lucas*, Wis., 90 N. W. Rep. 175.

222. PROCESS—Service. — A record recital of service of process by reading and leaving a copy held inconsistent with any presumption of service by leaving a copy with a member of defendant's family. — *Shehan v. Stuart*, Iowa, 90 N. W. Rep. 614.

223. PUBLIC LANDS—Sufficiency of Notice. — A description of land in a public notice in a proceeding to foreclose a tax certificate is sufficient, where the context of the notice shows clearly that land in this state is referred to, and there is but one tract in the state answering such description, although the description covers another tract situated in another state. — *Leigh v. Green*, Neb., 90 N. W. Rep. 255.

224. PUBLIC LANDS—Swamp Lands. — Where the United States surveyed and conveyed to the state as swamp lands certain real estate, and plaintiff acquired title from the state, such acts are conclusive as to the character of the land, giving plaintiff absolute ownership thereof, with the sole right to hunt thereon. — *Lamprey v. Danz*, Minn., 90 N. W. Rep. 578.

225. QUIETING TITLE — Amendment After Submission. — An application to amend the bill in a suit to remove clouds from title, made after the submission of the cause, by setting up a tax title to the land, should be granted. — *Hart v. Potter*, Miss., 31 South. Rep. 598.

226. QUIETING TITLE—Forged Deed. — Laches will not be imputed to one from a mere failure to watch the records to guard against the recording of a forged or

undelivered deed purporting to be a conveyance of his real estate. — *Van Auken v. Mizner*, Neb., 90 N. W. Rep. 637.

227. QUIETING TITLE—Limitations. — Limitations do not begin to run against an action to cancel a deed as a cloud on realty until some right is asserted, and knowledge thereof is brought to the holder of the title. — *Van Auken v. Mizner*, Neb., 90 N. W. Rep. 637.

228. QUO WARRANTO—Title to Offer. — In *quo warranto* by a private party to obtain possession of a public office, the relator must plead and prove facts entitling him thereto; but, in action by the attorney general, the burden is on respondent to show his title. — *State v. Davis*, Neb., 90 N. W. Rep. 232.

229. RAILROADS—Abandoned Right of Way. — Evidence is admissible, in an action by a landowner to recover a right of way from a railroad company for nonuser, that the road was originally built to reach certain coal mines, which have been abandoned, and that the coal company obtained the right of way. — *Gill v. Chicago & N. W. Ry. Co.*, Iowa, 90 N. W. Rep. 696.

230. RAILROADS—Communicated Fires. — A complaint alleging spread of fire from defendant railroad's right of way to plaintiff's buildings, caused by an ordinary wind, was not demurrable. — *Chicago & E. R. Co. v. Lesh*, Ind., 63 N. E. Rep. 794.

231. RAILROADS—Contributory Negligence. — Where a husband and wife, traveling together, are injured in a collision on a railroad crossing, the court cannot properly instruct that, if the wife relied on her husband to look and to listen, and to exercise reasonable care, she was relieved from so doing herself. — *Willfong v. Omaha & St. L. R. Co.*, Iowa, 90 N. W. Rep. 358.

232. RECEIVERS—Mortgagee. — Code, § 803, relating to suits against receivers, held not to authorize a mortgagor to bring ejectment against the lessee of the receiver in possession of the mortgaged premises without leave of court. — *Baker v. Carraway*, Ala., 31 South. Rep. 933.

233. RECOVERY — Bequest of Debt. — An action by a legatee to recover a debt bequeathed to him is not founded on the will, so as to require the will or a copy thereof to be attached to the complaint, under Burns' Rev. St. 1901, § 365. — *Jester v. Gustin*, Ind., 63 N. E. Rep. 471.

234. REPLEVIN—Damages. — In replevin by landowner against one who has cut timber, believing he had title, defendant is entitled to show, in reduction of a recovery against him, the cost of getting out the timber and floating it to where it was seized. — *Acre v. Bufford*, Miss., 31 South. Rep. 838.

235. REPLEVIN—Liability on Bond. — In an action to recover on plaintiff's bond in claim and delivery, held that the condition of the bond covers the costs and disbursements of the action. — *Katz v. American Bonding & Trust Co.*, Minn., 90 N. W. Rep. 376.

236. SALE OF REALTY—Validity of Contract. — A transfer on real estate must be held void, either as a sale or a dation, if it is not shown that it was made for a price agreed on. — *Pulford v. Dimmick*, La., 31 South. Rep. 879.

237. SPECIFIC PERFORMANCE—Contract of Sale. — Deed to a right of way for a railroad having been objected to only because of a crossing in controversy, the vendor was not thereafter to object that the deed was not sent to the person or the money paid as specified in the contract. — *Coy v. Minneapolis & St. L. R. Co.*, Iowa, 90 N. W. Rep. 344.

238. SPECIFIC PERFORMANCE—Limitations. — A suit for the specific performance of an oral contract to convey land, which has been partially performed, is not subject to Burns' Rev. St. 1901, § 235, requiring actions not otherwise limited to be brought in 15 years. — *Horne v. McConnell*, Ind., 63 N. E. Rep. 472.

239. SPECIFIC PERFORMANCE — Refusal to Convey. — Where a vendor refuses to convey merely because it has become difficult and expensive for him to do so, the rule applicable where a conveyance is impossible

does not apply, and actual damages may be allowed.—*Cornell v. Rodabaugh*, Iowa, 90 N. W. Rep. 369.

240. **SPECIFIC PERFORMANCE**—Right of Way.—A vendor of land for a right of way for a railroad, only having objected to a deed because of a dispute relative to a crossing, held not entitled to subsequently object to the character of the conveyance.—*Coy v. Minneapolis, & St. L. R. Co.*, Iowa, 90 N. W. Rep. 344.

241. **STATUTES**—Rate of Interest in Sister State.—An allegation in a petition on a note that it was executed in Oklahoma, under the laws of that territory, which provided that by special contract such a rate of interest as that "mentioned in said note" may be made a legal rate, is sufficient, on a general denial, to admit evidence of the Oklahoma statute.—*Hewitt v. Bank of Indian Territory*, Neb., 90 N. W. Rep. 236.

242. **STREET RAILROADS**—Collision with Wagon.—A boy driving a delivery wagon held not guilty of contributory negligence as matter of law in backing it up at right angles to the curb in order to deliver heavy goods at a store, though in so doing his horses necessarily stood across defendant's street car tracks.—*Fenner v. Wilkesbarre & W. V. Traction Co.*, Pa., 51 Atl. Rep. 1034.

243. **STREET RAILROADS**—Negligence.—In an action for personal injuries in a collision with a street car, an instruction that defendant was liable for the injury inflicted after the motorman could have stopped the car held erroneous.—*Indianapolis St. Ry. Co. v. Taylor*, Ind., 63 N. E. Rep. 456.

244. **SUBROGATION**—Mistake of Fact.—Where complainant, who purchased at a second mortgage sale and secured release of first mortgage, sought to be subrogated to rights of first and second mortgagees, the complaint held to show mistake of fact.—*Home Inv. Co. v. Clarkson*, S. Dak., 90 N. W. Rep. 153.

245. **TAXATION**—Growing Trees.—While the legal ownership of growing trees on a plantation remains in the owner of the land, they must be assessed with the land.—*Williams v. Triche*, La., 31 South. Rep. 926.

246. **TAXATION**—Precincts.—Where taxation precincts are established, they retain their character, as far as the assessment of property and the levy of general taxes are concerned, until divided or modified in some manner authorized by law.—*Whelen v. Cassidy*, Neb., 90 N. W. Rep. 229.

247. **TAXATION**—Railroads.—Where a domestic railroad corporation leases the properties and franchises of another for the life of the lessor's charter, the lessee acquires only a lessee's interest in the properties, and is not taxable as owner thereof.—*People v. Feitner*, N. Y., 63 N. E. Rep. 786.

248. **TAXATION**—Transfer Tax.—Gift of securities, with reservation of income thereof, held subject to the transfer tax.—*In re Cornell's Estate*, N. Y., 63 N. E. Rep. 445.

249. **TRESPASS**—License.—When a license to occupy real estate for a certain purpose is revoked by a conveyance by the licensor to a third person, the latter, being entitled to the immediate possession of the property, may maintain trespass against the licensee for his continuance in possession.—*Hicks v. Swift Creek Mill Co.*, Ala., 31 South. Rep. 947.

250. **TRIAL**—Disregarding Testimony.—An instruction that, if S testified at a former trial with reference to material matter at variance with his testimony on the present trial, the fact tended to impeach him, and unless his testimony was corroborated the jury could disregard it entirely, etc., was properly refused, because singling out the witness by name.—*Matthews v. Granger*, Ill., 63 N. E. Rep. 678.

251. **TRIAL**—Preliminary Instructions.—A peremptory instruction for plaintiff was properly refused, where the same was not requested until after the issues had been submitted to the jury on instructions requested by each party.—*Starkweather v. Maginnis*, Ill., 63 N. E. Rep. 692.

252. **TRIAL**—Questions of Fact.—The words, "how they should find any question of fact," in instruction that the jury are judges of the questions of fact, and the court does not intend to instruct how they should find any question of fact, plainly mean at what conclusion they should arrive.—*South Chicago City Ry. Co. v. McDonald*, Ill., 63 N. E. Rep. 634.

253. **TRIAL**—Street Railway.—An instruction relating to the nonliability of a street railway company to keep on guard against unusual or extraordinary obstacles on the track held covered by the charge as given.—*West Chicago St. Ry. Co. v. Peters*, Ill., 63 N. E. Rep. 662.

254. **TRIAL**—Without Jury.—The trial court, in trying a case without a jury, must make findings on every issue raised by the pleadings, and, if it fails to do so, a new trial will be granted, or the case sent back, with directions to find on all the issues.—*Taylor v. Vandenberg*, S. Dak., 90 N. W. Rep. 142.

255. **TROVER AND CONVERSION**—Exemplary Damages.—Complaint in conversion, which simply alleges that defendant's act was wrongful, and states the actual value of the property, the amount of the alleged damage does not make a case for exemplary damages.—*Vine v. Casmev*, Minn., 90 N. W. Rep. 158.

256. **TRUSTS**—Consideration.—Trust deed, made with nominal consideration for the benefit of grantor's wife and her children, including two children by a former marriage, held not invalid for lack of consideration as to the stepchildren.—*Chilvers v. Race*, Ill., 90 N. W. Rep. 701.

257. **WATERS AND WATER COURSES**—Clandestine Taking of Water.—When a city has authority to maintain waterworks and furnish water to consumers, that it is municipal corporation does not affect its right to recover for water clandestinely taken from its mains.—*City of Milwaukee v. Herman Zoehrlaut Leather Co.*, Wis., 90 N. W. Rep. 187.

258. **WATERS AND WATER COURSES**—Riparian Rights.—A lower riparian owner, using the water of a stream for power, has no legal cause for complaint against a municipality, using the water for domestic use of its inhabitants.—*City of Canton v. Shock*, Ohio, 63 N. E. Rep. 600.

259. **WILLS**—Absolute Estates.—Where a testator devises an absolute estate to trustees, and thereafter directs that the vacant lands be leased, the latter clause is not a restriction on the absolute estate previously granted.—*Blackshire v. Trustees of Samuel Ready School for Female Orphans*, Md., 51 Atl. Rep. 1055.

260. **WILLS**—Construction.—Gift of absolute estate held not reduced to a life estate by a provision that the legatees should have power to devise, and on failure the property should go to their heirs.—*Trask v. Sturges*, N. Y., 63 N. E. Rep. 534.

261. **WILLS**—Renunciation of Provisions.—Contest of wife's will by husband held not a renunciation of testamentary provision made for him, so as to enable him to take dower, under Dower Act, § 11.—*Scheible v. Rinck*, Ill., 63 N. E. Rep. 497.

262. **WITNESSES**—Examination.—Court, after excluding certain questions as too leading and others as too general, held to have erred in refusing to suggest a suitable question to counsel.—*Goodwin v. State*, Wis., 90 N. W. Rep. 170.

263. **WITNESSES**—Failure to Produce Material Witness.—Failure of plaintiff to call a material available witness held to create a presumption that his testimony would have been prejudicial to him.—*Banagan v. Clark*, 73 N. Y. Supp. 1019.

264. **WITNESSES**—Impeachment.—Where, in laying a foundation for the impeachment of a witness, the conversation inquired about was given as occurring on the day preceding, and the place as in the town where the trial was being had, the town being only a small village, the conversation was described with sufficient certainty, though the location of the conversation was not more definitely given.—*Musfelt v. State*, Neb., 90 N. W. Rep. 237.